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# Federal Register

**7–22–02** **Monday**
**Vol. 67 No. 140** **July 22, 2002**
**Pages 47679–48014**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–388–AD; Amendment 39–12824; AD 2002–14–24]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Model 650 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Model 650 airplanes, that requires a one-time inspection of the side brace mechanism assemblies of the left and right main landing gears (MLG) to detect any incorrect part number, and corrective actions if necessary. This action is necessary to prevent inadvertent disengagement of the locking mechanism of the side brace mechanism assembly, which could lead to collapse of the respective MLG, and result in a gear-up landing and possible injury to passengers and crew. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 26, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2002.

**ADDRESSES:** The service information referenced in this AD may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Cessna Model 650 airplanes was published in the **Federal Register** on March 28, 2002 (67 FR 14893). That action proposed to require a one-time inspection of the side brace mechanism assemblies of the left and right main landing gears (MLG) to detect any incorrect part number, and corrective actions if necessary.

### Comments

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

### Support for the Proposal

The commenter supports the proposed rule.

### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 353 Model 650 airplanes of the affected design in the worldwide fleet. The FAA estimates that 282 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $169,200, or $600 per airplane.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2002–14–24 Cessna Aircraft Company:** Amendment 39–12824. Docket 2000–NM–388–AD.

*Applicability:* Model 650 airplanes, serial numbers –0001 through –0241 inclusive, and serial numbers –7001 through –7112 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 (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 as indicated, unless accomplished previously.

To prevent inadvertent disengagement of the locking mechanism of the side brace mechanism assembly of the left or right main landing gear (MLG), which could lead to collapse of the respective MLG, and result in gear-up landing and possible injury to passengers and crew; accomplish the following:

**One-Time Inspection**

(a) Within 6 months after the effective date of this AD, do a one-time inspection of the side brace mechanism assemblies of the left and right MLGs to detect any incorrect part number (P/N) found installed, as specified in Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000.

(1) If the correct part number is found installed on the left side brace mechanism assembly, P/N 6217076–201, and on the right side brace mechanism assembly, P/N 6217076–202, no further action is required by paragraph (a) of this AD.

**Corrective Action**

(2) If incorrect P/N 6217076–2, 6217076–4, or 6217076–9 is found installed on either the left or right side brace mechanism assembly: Prior to further flight, replace any incorrect left side brace mechanism assembly with a new, improved assembly, P/N 6217076–201; and replace any incorrect right side brace mechanism assembly with a new, improved assembly, P/N 6217076–202; per Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000. After the replacement action, no further action is required by this AD.

**Spares**

(b) As of the effective date of this AD, no person shall install a left or right MLG side brace mechanism assembly, P/N 6217076–2, 6217076–4, or 6217076–9, on any airplane.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

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

**Incorporation by Reference**

(e) The actions shall be done in accordance with Cessna Service Bulletin SB650–32–47, including Cessna Service Bulletin Supplemental Data SB650–32–47, both dated August 14, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on August 26, 2002.

Issued in Renton, Washington, on July 11, 2002.

**Lorio Liu-Nelson,**

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

[FR Doc. 02–18199 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–CE–11–AD; Amendment 39–12829; AD 2002–15–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Diamond Aircraft Industries GmbH Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS Sailplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to all Diamond Aircraft Industries GmbH (Diamond) Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS sailplanes. This AD requires you to inspect the long aileron push rods in both wings for damage and modify the push rods. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by this AD are intended to detect and correct damage in the long aileron push control rods, which could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

**DATES:** This AD becomes effective on September 3, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 3, 2002.

**ADDRESSES:** You may get the service information referenced in this AD from Diamond Aircraft Industries GmbH, N.A. Otto-Strasse 5, A–2700 Wiener Neistadt, Austria; telephone: 43 2622 26 700; facsimile: 43 2622 26 780. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–11–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106;

telephone: (816) 329–4144; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

*What Events Have Caused This AD?*

The Austro Control GmbH (Austro Control), which is the airworthiness authority for Austria, recently notified FAA that an unsafe condition may exist on all Diamond Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS sailplanes. The Austro Control reports that during the preflight of one sailplane, the long aileron push rod was found to be broken. On several sailplanes, the aileron push control rods in both wings were found damaged due to contact or interference with the support for the aileron bellcrank.

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

If the damaged aileron push control rods are not detected and corrected, the damage could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

*Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Diamond Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 20, 2002 (67 FR 35459). The NPRM proposed to require you to inspect the long aileron push rods in both wings for damage and modify the push rods.

*Was the Public Invited To Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

**FAA's Determination**

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

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

**Cost Impact**

*How Many Sailplanes Does This AD Impact?*

We estimate that this AD affects 45 sailplanes in the U.S. registry.

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

We estimate the following costs to accomplish the inspection:

| Labor cost | Parts cost | Total cost per sailplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 workhour × $60 per hour = $60 | None | $60 | $60 × 45 = $2,700 |

We estimate the following costs to accomplish the modification:

| Labor cost | Parts cost | Total cost per sailplane | Total cost on U.S. operators |
|---|---|---|---|
| 2 workhours × $60 per hour = $120 | $80 | $200 | $200 × 45 = $9,000 |

**Compliance Time of This AD**

*Why Is a Compliance Time of 10 Hours Time-in-Service (TIS) Used for the Inspection of the Long Aileron Push Rods?*

Normally, FAA uses a 10-hour TIS compliance time for urgent safety of flight conditions. However, sailplane operation varies among operators. It might take operators between 3 months to 12 months or more to accumulate 10 hours TIS. For this reason, FAA has determined that the compliance time of this AD should be 10 hours TIS to ensure this condition is corrected in a timely manner but does not unduly penalize operators.

**Regulatory Impact**

*Does This AD Impact Various Entities?*

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

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

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final 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, Incorporation by reference, Safety.

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2002–15–01 Diamond Aircraft Industries GMBH:** Amendment 39–12829; Docket No. 2002–CE–11–AD.

(a) *What sailplanes are affected by this AD?* This AD affects Models H–36 ''Dimona'', HK 36 R ''Super Dimona'', HK 36 TC, HK 36 TS, HK 36 TTC, HK 36 TTC–ECO, HK 36 TTC–ECO (Restricted Category), and HK 36 TTS sailplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the sailplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage in the long aileron push control rods, which could result in failure of the aileron push rods and decreased control. Such failure could lead to aeroelastic flutter.

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the long aileron push rods in both wings. | Within the next 10 hours time-in-service (TIS) after September 3, 2002 (the effective date of this AD). | In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002; Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002; and the applicable sailplane maintenance manual. |
| (2) If any long aileron push rods are found damaged during the inspection required in paragraph (d)(1) of this AD, modify the push rods. | Before further flight, after the inspection required in paragraph (d)(1) of this AD. | In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002; Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002; and the applicable sailplane maintenance manual. |
| (3) If no damage is found during the inspection required in paragraph (d)(1), modify the push rods. | Within the next 25 hours TIS after September 3, 2002 (the effective date of this AD). | In accordance with paragraph 1.8 Measures of Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002; Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002; and the applicable sailplane maintenance manual. |

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Diamond Aircraft Industries GmbH Service Bulletin No. MSB36–72, dated February 1, 2002; and Diamond Aircraft Industries GmbH Work Instruction No. WI–MSB36–72, dated February 1, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Diamond Aircraft Industries GmbH, N.A. Otto-Strasse 5, A–2700 Wiener Neistadt, Austria; telephone: 43 2622 26 700; facsimile: 43 2622 26 780. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Note 2:** The subject of this AD is addressed in Austrian AD No. 111, dated February 26, 2002.

(i) *When does this amendment become effective?* This amendment becomes effective on September 3, 2002.

Issued in Kansas City, Missouri, on July 12, 2002.

**Dorenda D. Baker,**

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

[FR Doc. 02–18333 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NE–35–AD; Amendment 39–12826; AD 2002–14–26]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca S.A. Arriel Models 1A, 1A1, 1B, 1D, and 1D1 Turboshaft Engines

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Turbomeca S.A. Arriel models 1A, 1A1, 1B, 1D, and 1D1 turboshaft engines. This action requires installation of containment shield rings around the free turbine blade area, and installation of a double support around the gearbox free turbine bearing housing. This amendment is prompted by two reports of the cantilevered axis of the free turbine moving from its design position and inducing blade trajectories outside the current design free turbine containment area. This condition can lead to uncontainment of the free turbine during an overspeed

event. The actions specified in this AD are intended to prevent uncontainment of the free turbine during an overspeed event, resulting in damage to the helicopter.

**DATES:** Effective August 6, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 6, 2002.

Comments for inclusion in the Rules Docket must be received on or before September 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. 2001–NE–35–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 this AD may be obtained from Turbomeca S.A., 40220 Tarnos, France; telephone: (33) 05 59 64 40 00; Fax: (33) 05 59 64 60 80. 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; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299, telephone (781) 238–7175; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arriel models 1A, 1A1, 1B, 1D, and 1D1 turboshaft engines. The DGAC advises that two reports were received of the cantilevered axis of the free turbine moving from its design position and inducing blade trajectories outside the current design, free turbine containment area. This condition can lead to uncontainment of the free turbine during an overspeed event.

**Manufacturer's Service Information**

Turbomeca S.A. has issued service bulletin (SB) No. A292 72 0206, Update 2, dated October 23, 2000, which specifies installation of modification TU 254, containment shield ring made of INCO 625 material, SB No. A292 72 0207, Update 2, dated October 23, 2000, which specifies installation of modification TU 255, additional containment shield ring made of Z10CNT 18–11 material, and SB No. 292 72 0208, Update 2, dated May 13, 1996, which specifies installation of modification TU 259, double support around the reduction gearbox free turbine bearing housing, to maintain bearing centering. The DGAC classified these SB's as mandatory and issued AD 1995–069(A)R3, dated March 7, 2001, to assure the airworthiness of these Turbomeca S.A. engines in France.

**Bilateral Airworthiness Agreement**

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

**FAA's Determination of an Unsafe Condition and Required Actions**

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca S.A. Arriel models 1A, 1A1, 1B, 1D, and 1D1 turboshaft engines of the same type design, this AD is being issued to prevent uncontainment of the free turbine during an overspeed event, resulting in damage to the helicopter. This AD requires installation of containment shield rings around the free turbine blade area, and installation of a double support around the gearbox free turbine bearing housing to maintain bearing centering. The actions must be done in accordance with the SB's described previously.

**Immediate Adoption of This AD**

Since there are currently no domestic operators of this engine model affected by the adoption of this rule, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation, and good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications 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 comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NE–35–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Analysis**

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation

under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2002–14–26 Turbomeca S.A.**: Amendment 39–12826. Docket No. 2001–NE–35–AD.

*Applicability:* This airworthiness directive (AD) is applicable to Turbomeca S.A. Arriel models 1A, 1A1, 1B, 1D, and 1D1 turboshaft engines. These engines are installed on, but not limited to, Astar AS350D; Eurocopter AS350B, BA, B1, L1, and B2N; and Fennic AS550U2 helicopters.

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

To prevent uncontainment of the free turbine during an overspeed event, resulting in damage to the helicopter, do the following:

(a) For Arriel engine models 1A and 1A1 that have incorporated modification TU 13, but have not incorporated modification TU 99 and modification TU 215, and for Arriel engine models 1B and 1D that have not incorporated modification TU 99 and modification TU 215, do the following within 30 days after the effective date of this AD:

(1) Install containment shield ring in accordance with the Instructions to be Incorporated, paragraphs 2A. through 2C, (modification TU 254) of service bulletin (SB) No. A292 72 0206, Update 2, dated October 23, 2000.

(2) Install double support around the reduction gearbox free turbine bearing housing, in accordance with Instructions for Incorporation, paragraphs 2A. through 2C, (modification TU 259) of SB No. 292 72 0208, Update 2, dated May 13, 1996.

(b) For Arriel engine models 1A and 1A1 that have incorporated modification TU 13 and modification TU 99, but have not incorporated modification TU 215, and Arriel engine models 1B, 1D, and 1D1 that have incorporated modification TU 99, but have not incorporated modification TU 215, do the following within 30 days after the effective date of this AD:

(1) Install additional containment shield ring, in accordance with the Instructions to be Incorporated, paragraphs 2A. through 2C, (modification TU 255) of SB No. A292 72 0207, Update 2, dated October 23, 2000.

(2) Install double support around the reduction gearbox free turbine bearing housing, in accordance with Instructions for Incorporation, paragraphs 2A. through 2C, (modification TU 259) of SB No. 292 72 0208, Update 2, dated May 13, 1996.

**Alternative Methods of Compliance**

(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, Engine Certification Office (ECO). Operators must submit their requests 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**

(d) 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 helicopter to a location where the requirements of this AD can be done.

**Documents That Have Been Incorporated by Reference**

(e) The modifications must be done in accordance with the following Turbomeca S.A. mandatory service bulletins (MSB's):

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| MSB No. A292 72 0206, Total pages: 8 | All | 2 | Oct. 23, 2000. |
| MSB No. A292 72 0207, Total pages: 7 | All | 2 | Oct. 23, 2000. |
| MSB No. 292 72 0208, Total pages: 8 | All | 2 | May 13, 1996. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca S.A., 40220 Tarnos, France; telephone: (33) 05 59 64 40 00; fax: (33) 05 59 64 60 80. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive AD 1995–069(A)R3.

**Effective Date**

(f) This amendment becomes effective on August 6, 2002.

Issued in Burlington, Massachusetts, on July 8, 2002.

**Jay J. Pardee,**

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

[FR Doc. 02–18203 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–CE–124–AD; Amendment 39–12828; AD 2002–14–28]**

**RIN 2120–AA64**

## Airworthiness Directives; de Havilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain de Havilland Inc. (de Havilland) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This AD establishes a life limit for the front fuselage struts and requires you to repetitively replace the front fuselage struts every 15 years or repetitively inspect the struts for corrosion or fatigue damage and replace when the damage exceeds a certain level. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. The actions specified by this AD are intended to prevent structural failure of the front fuselage caused by corrosion or fatigue damage to the struts that develops over time, which could result in reduced or loss of control of the airplane.

**EFFECTIVE DATE:** This AD becomes effective on September 6, 2002.

**ADDRESSES:** You may get the service information referenced in this AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–124–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jon Hjelm, Aerospace Engineer, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; telephone: (516) 256–7523; facsimile: (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

## Discussion

*What Events Have Caused This AD?*

Transport Canada, which is the airworthiness authority for Canada, notified FAA that an unsafe condition may exist on certain de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. Transport Canada reports numerous incidents of corrosion of the front fuselage struts. Further analysis of the front fuselage struts reveals that these parts are not life limited and incur corrosion and fatigue damage over time.

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

Corrosion damage, if not detected and corrected, could result in failure of the front fuselage and possible reduced or loss of control of the airplane.

*Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain de Havilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 28, 2002 (67 FR 14886). The NPRM proposed to establish a life limit for the front fuselage struts and would require you to repetitively replace the front fuselage struts every 15 years or repetitively inspect the struts for corrosion or fatigue damage and replace when the damage exceeds a certain level.

*Was the Public Invited To Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

## FAA's Determination

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

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

## Cost Impact

*How Many Airplanes Does This AD Impact?*

We estimate that this AD affects 354 airplanes in the U.S. registry.

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

We estimate the following costs to accomplish the replacement:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. Operators |
|---|---|---|---|
| 108 workhours × $60 an hour = $6,480 per airplane. | $2,352 per airplane ..... | $8,832 per airplane per replacement ..... | $3,126,528 |

## Compliance Time of This AD

*What Will Be the Compliance Time of This AD?*

The replacement compliance time of this AD is ''initially replace upon accumulating 15 years from the date of installation of the front fuselage struts or within the next 12 calendar months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 15 years.'' If the repetitive inspection option is used, then the repetitive compliance time interval will be at 1 and 5 years depending on the method used (provided certain corrosion or damage limits are not exceeded).

*Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?*

The compliance of this AD is presented in calendar time instead of hours TIS. The need for establishing a life limit for the front fuselage struts as specified in this AD is the result of reports of corrosion found in this area on the affected airplanes. Corrosion can occur regardless of whether the aircraft is in operation. In order to ensure that the unsafe condition specified in this AD does not go undetected if the airplane was not in operation for an extended period of time, the compliance is presented in calendar time instead of hours TIS.

## Regulatory Flexibility Determination and Analysis

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

The Regulatory Flexibility Act of 1980 was enacted by Congress to assure that small entities are not unnecessarily or disproportionately burdened by government regulations. This Act establishes ''as principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational

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

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

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

*What Is FAA's Determination?*

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

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

**Regulatory Impact**

*Does This AD Impact Various Entities?*

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

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) could have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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.

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2002–14–28 de Havilland Inc.:** Amendment 39–12828; Docket No. 98–CE–124–AD.

(a) *What airplanes are affected by this AD?* This AD affects all serial numbers of Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the front fuselage caused by corrosion or fatigue damage to the struts that develops over time, which could result in reduced or loss of control of the airplane.

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Replace each front fuselage strut with a new strut. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD. | Initially replace upon accumulating 15 years on each front fuselage strut or within the next 12 calendar months after September 6, 2002 (the effective date of this AD), whichever occurs later. Repetitively replace thereafter upon accumulating 15 years on each front fuselage strut. | In accordance with the applicable maintenance manual, as specified in de Havilland Parts Service Manual 1–2–2, Part 5, Temporary Revision 2–22; and de Havilland Parts Service Manual 1–2T–2, Part 5, Temporary Revision 2T–6, both dated August 3, 1998. |

| Actions | Compliance | Procedures |
|---|---|---|
| (2) As an alternative method of compliance to the replacements in paragraph (d)(1) of this AD, you may repetitively inspect each front fuselage strut, as follows:.<br>(i) perform a detailed inspection of each front fuselage strut and all fittings attached to the frame for damage (corrosion, cracks, dents). When fatigue damage is found, you must replace the damaged strut. After each inspection, clean the drain holes around the bottom end fitting and protect the tube with an appropriate corrosion preventive spray. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD.<br>(ii) perform an ultrasonic thickness measurement of all surface on each front fuselage strut. When minimum thickness is below 0.030 inches, you must replace the affected strut. Part numbers for existing and replacement front fuselage struts parts are presented in paragraph (e) of this AD. | Initially inspect upon accumulating 15 years on each front fuselage strut or within the next 12 calendar months after September 6, 2002 (the effective date of this AD), whichever occurs later. Accomplish the repetitive detailed inspection thereafter at intervals not to exceed 12 months and the ultrasonic thickness measurement at intervals not to exceed 5 years. Accomplish the corrosion prevention work prior to further flight after each inspection. Accomplish the replacement prior to further flight after damage is found or the thickness is found below 0.030 inches. Then, after replacement either replace with a new strut at 15-year intervals thereafter or repetitively inspect as prescribed above beginning at 15 years after each replacement. | For the detailed inspection, use an inspection light, inspection mirror, and 10X magnifying glass. For the ultrasonic inspection, use FAA-approved procedures that follow a similar calibration and measures strut thickness to that detailed in Bombardier Service Bulletin 2/49, Revision C. |
| (3) Do not install, on any affected airplane, any front fuselage strut unless it has a part number specified in the Replacement Part Number column of the chart presented in paragraph (e) of this AD. | As of September 6, 2002 (the effective date of this AD. | Not Applicable. |

(e) *What part number front fuselage struts should I use for replacements?* The following charts presents the part numbers for existing parts and replacement parts for the front fuselage strut replacements:

| Installed part No. | Replacement part No. | Description |
|---|---|---|
| C2FS209 or C2FS3281A | C2FS3281A | Strut Assembly Front Fuselage, Left. |
| C2FS210 or C2FS3282A | C2FS3282A | Strut Assembly Front Fuselage, Right. |

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

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

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

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

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone: (516) 256–7523; facsimile: (516) 256–2716.

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

(i) *How do I get copies of the documents referenced in this AD?* You may direct technical questions to or get copies of the documents referenced in this AD from Bombardier Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Note 2:** The subject of this AD is addressed in Canadian AD CF–98–37R1, dated August 20, 1999.

(j) *When does this amendment become effective?* This amendment becomes effective on September 6, 2002.

Issued in Kansas City, Missouri, on July 15, 2002.

**Dorenda D. Baker,**

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

[FR Doc. 02–18334 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 558

## New Animal Drugs for Use in Animal Feeds; Melengestrol

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of several supplemental applications filed by Pharmacia and Upjohn Co. to their new animal drug applications (NADAs) for the use of single-ingredient Type A medicated

articles containing melengestrol acetate, monensin, and tylosin to make two-way and (with tylosin) three-way, dry and liquid, combination drug Type C medicated feeds for heifers fed in confinement for slaughter. Some of the supplemental NADAs add the single-ingredient monensin claim for prevention and control of coccidiosis in feedlot heifers to the indications for combinations of melengestrol acetate and monensin with and without tylosin. Other supplemental NADAs extend the dose of tylosin to the single-ingredient range of 60 to 90 milligrams (mg) per head per day to reduce the incidence of liver abscesses in feedlot heifers and provide for use of liquid Type C medicated feeds containing melengestrol acetate and tylosin with and without monensin.

**DATES:** This rule is effective July 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Daniel A. Benz, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0223, dbenz@cvm.fda.gov.

**SUPPLEMENTARY INFORMATION:** Pharmacia and Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed supplemental applications to NADAs 124–309 and 125–476 that provide for use of MGA (melengestrol acetate) Premixes and RUMENSIN (monensin sodium) Premixes to make two-way, dry and liquid, combination drug Type C medicated feeds and to NADAs 138–792 and 138–870 that provide for use of MGA Premixes, RUMENSIN Premixes, and TYLAN (tylosin phosphate) Premixes to make three-way, dry and liquid, combination drug Type C medicated feeds for heifers fed in confinement for slaughter. These supplemental NADAs add the claim for use of 50 to 360 mg of monensin per head per day for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*. Pharmacia and Upjohn Co. also filed supplemental applications to NADAs 138–995 and 139–192 that provide for combination use of MGA Premixes and TYLAN Premixes, and to NADAs 138–792 and 138–870, described previously. These supplemental NADAs extend the dose of tylosin to a range of 60 to 90 mg per head per day to reduce the incidence of liver abscesses caused by *Fusobacterium necrophorum and Actinomyces (Corynebacterium) pyogenes* and provide for use of liquid Type C medicated feeds in combinations of melengestrol acetate and tylosin with and without monensin in heifers fed in confinement for slaughter. The supplemental applications are approved as of February 26, 2002, and the regulations are amended in § 558.342 (21 CFR 558.342) to reflect the approvals. Where appropriate, the basis of approval is discussed in freedom of information summaries.

Section 558.342 is also being revised to include a table format and to correct drug labeler codes to reflect recent changes of sponsorship for single-ingredient lasalocid (66 FR 46705, September 7, 2001) and oxytetracycline (66 FR 47962, September 17, 2001) Type A medicated articles. Section 558.355 is also being revised to delete a redundant entry and to add a cross-reference.

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

The agency has determined under 21 CFR 25.33(a)(2) and (a)(6) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither environmental assessments nor environmental impact statements are required.

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

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

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

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.342 is amended by revising the section heading and paragraph (a); by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively; by adding a new paragraph (b) and paragraphs (d)(3) through (d)(8); and by revising newly redesignated paragraph (e) to read as follows:

### § 558.342 Melengestrol.

(a) *Specifications.* (1) Dry Type A medicated articles containing 100 or 200 milligrams (mg) melengestrol acetate per pound.

(2) Liquid Type A medicated article containing 500 mg melengestrol acetate per pound.

(b) *Approvals.* See No. 000009 in § 510.600(c) of this chapter.

* * * * *

(d) * * *

(3) Combination Type B or C medicated feeds containing lasalocid must be labeled in accordance with § 558.311(d)(5) of this chapter.

(4) Liquid combination Type B or C medicated feeds containing melengestrol acetate and lasalocid must be manufactured in accordance with § 558.311(d) of this chapter.

(5) Combination Type B or C medicated feeds containing monensin must be labeled in accordance with § 558.355(d) of this chapter.

(6) Liquid combination Type B or C medicated feeds containing melengestrol acetate and monensin must be manufactured in accordance with § 558.355(f)(3)(i) of this chapter.

(7) Liquid combination Type B or C medicated feeds containing melengestrol acetate and tylosin must be manufactured in accordance with § 558.625(c) of this chapter.

(8) Liquid melengestrol acetate may not be mixed with oxytetracycline in a common liquid feed supplement.

(e) *Conditions of use*—(1) *Cattle.*

| Melengestrol acetate in mg/head/day | Combination in mg/head/day | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (i) 0.25 to 0.5 | | Heifers fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat). | Administer 0.5 to 2.0 pounds (lb)/head/day of medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to provide 0.25 to 0.5 mg melengestrol acetate/head/day. | 000009 |

| Melengestrol acetate in mg/head/day | Combination in mg/head/day | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (ii) 0.5 | | Heifers intended for breeding: For suppression of estrus (heat). | Administer 0.5 to 2.0 lb/head/day of Type C feed containing 0.25 to 1.0 mg melengestrol acetate/lb to provide 0.5 mg melengestrol acetate/head/day. Do not exceed 24 days of feeding. | 000009 |
| (iii) 0.25 to 0.5 | Lasalocid 100 to 360 | Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section. | Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 1.0 mg melengestrol acetate/lb to a feed containing 10 to 30 grams (g) of lasalocid per ton; or add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 1.0 mg melengestrol acetate plus 50 to 720 mg lasalocid/lb to a ration of nonmedicated feed to provide 0.25 to 0.5 mg melengestrol acetate and 100 to 360 mg lasalocid/head/day.<br>Lasalocid provided by No. 046573 in § 510.600(c) of this chapter. | 000009 |
| (iv) 0.25 to 0.5 | Lasalocid 100 to 360 plus tylosin 90 | Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section; and for reduced incidence of liver abscesses. | To administer 0.25 to 0.5 mg melengestrol acetate plus 100 to 360 mg lasalocid plus 90 mg tylosin/head/day:<br>1. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to a medicated feed containing 10 to 30 g lasalocid and 8 to 10 g tylosin per ton; or<br>2. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate plus 50 to 720 mg lasalocid/lb to 4.5 to 18 lb of a dry medicated feed containing 10 to 40 g tylosin per ton; or<br>3. Add 0.5 to 2.0 lb/head/day of a dry pelleted medicated feed containing 0.125 to 1.0 mg melengestrol acetate (from a dry Type A article), 50 to 720 mg lasalocid, and 45 to 180 mg tylosin/lb to a ration of nonmedicated feed.<br>Lasalocid provided by No. 046573 and tylosin as tylosin phosphate by No. 000986 in § 510.600(c) of this chapter. | 000009 |
| (v) 0.25 to 0.4 | Monensin 50 to 360 | Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section. | Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 0.80 mg melengestrol acetate/lb to a feed containing 5 to 30 g monensin per ton; or add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 0.80 mg melengestrol acetate plus 25 to 720 mg monensin/lb to a nonmedicated feed to provide 0.25 to 0.40 mg melengestrol acetate and 50 to 360 mg monensin/head/day.<br>Monensin provided by No. 000986 in § 510.600(c) of this chapter. | 000009 |

| Melengestrol acetate in mg/head/day | Combination in mg/head/day | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (vi) 0.25 to 0.4 | Monensin 50 to 360 | Heifers fed in confinement for slaughter: As in item paragraph (e)(1)(i) of this section; and for the prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*. | Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 0.80 mg melengestrol acetate/lb to a feed containing 10 to 30 g monensin per ton; or add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 0.80 mg melengestrol acetate plus 25 to 720 mg monensin/lb to a nonmedicated feed to provide 0.25 to 0.40 mg melengestrol acetate and 0.14 to 0.42 mg monensin/lb body weight, up to 360 mg monensin/head/day.<br>Monensin provided by No. 000986 in § 510.600(c) of this chapter. | 000009 |
| (vii) 0.25 to 0.5 | Monensin 50 to 360 plus tylosin 60 to 90 | Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section; for the prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*; and for reduced incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes*. | To administer 0.25 to 0.50 mg melengestrol acetate to 50 to 360 mg monensin plus 60 to 90 mg tylosin/head/day:<br>1. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to a medicated feed containing 5 to 30 g monensin and 8 to 10 g tylosin per ton; or<br>2. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate plus 25 to 720 mg monensin per pound to 4.5 to 18 lb of a dry medicated feed containing 10 to 40 g tylosin per ton; or<br>3. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate (from a dry Type A article), 25 to 600 mg monensin, and 45 to 180 mg tylosin/lb to a ration of nonmedicated feed.<br>Monensin and tylosin as tylosin phosphate provided by No. 000986 in § 510.600(c) of this chapter. | 000009 |
| (viii) 0.25 to 0.5 | Oxytetracycline 75 | Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section; and for reduction of liver condemnation due to liver abscesses. | Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 1.0 mg melengestrol acetate/lb per pound to a feed containing 6 to 10 g oxytetracycline per ton; or add at the rate of 0.5 to 2.0 lb/head/day a dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate plus 37.5 to 150 mg oxytetracycline/lb to provide 0.25 to 0.5 mg melengestrol acetate and 75 mg oxytetracycline/head/day.<br>Oxytetracycline as provided by No. 066104 in § 510.600(c) of this chapter. | 000009 |

| Melengestrol acetate in mg/head/day | Combination in mg/head/day | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (ix) 0.25 to 0.5 | Tylosin 60 to 90 | Heifers fed in confinement for slaughter: As in paragraph (e)(1)(i) of this section; and for reduced incidence of liver abscesses caused by *F. necrophorum* and *Actinomyces* (*Corynebacterium*) *pyogenes*. | To administer 0.25 to 0.5 mg melengestrol acetate with 60 to 90 mg tylosin/head/day:<br>1. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to a medicated feed containing 8 to 10 g tylosin per ton; or<br>2. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate/lb to 4.5 to 18 pounds of a dry medicated feed containing 10 to 40 g tylosin per ton; or<br>3. Add 0.5 to 2.0 lb/head/day of a liquid or dry medicated feed containing 0.125 to 1.0 mg melengestrol acetate (from a dry Type A article) plus 45 to 180 mg tylosin/lb to a ration of nonmedicated feed.<br>Tylosin as tylosin phosphate provided by No. 000986 in § 510.600(c) of this chapter. | 000009 |

(2) [Reserved]

3. Section 558.355 is amended by removing and reserving paragraph (f)(3)(iv) and by revising paragraph (f)(7) to read as follows:

**§ 558.355 Monensin.**

* * * * *

(f) * * *

(7) Monensin may also be used in combination with:

(i) Decoquinate alone or with tylosin as in § 558.195.

(ii) Melengestrol acetate alone or with tylosin as in § 558.342.

Dated: July 8, 2002.

**Andrew J. Beaulieu,**

*Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 02–18367 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Ractopamine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADAs) filed by Elanco Animal Health for their ractopamine hydrochloride Type A medicated article. The supplemental NADAs provide for use of a 45-gram-per-pound (g/lb) strength Type A medicated article to make Type B and Type C medicated feeds for finishing swine, for amending the assay limits for Type B and Type C medicated feeds containing ractopamine, and for the addition of cautionary statements to labeling.

**DATES:** This rule is effective July 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: candres@cvm.fda.gov.

**SUPPLEMENTARY INFORMATION:** Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed two supplemental applications to NADA 140–863 for PAYLEAN (ractopamine hydrochloride), a Type A medicated article used to make Type B and Type C medicated feeds for finishing swine. The first supplemental NADA provides for use of a 45-g/lb strength of PAYLEAN and for amending the assay limits for Type B and Type C medicated feeds containing ractopamine. The second supplemental NADA provides for addition of cautionary statements to labeling. The supplemental NADAs are approved as of February 27 and June 1, 2001, respectively, and the regulations are amended in §§ 558.4 and 558.500 (21 CFR 558.4 and 558.500) to reflect the approval.

In addition, § 558.500 is being revised to correct the wording of the indications for the use of ractopamine alone or in combination with tylosin.

Approval of the first supplemental NADA did not require review of safety or effectiveness data; therefore, a freedom of information summary is not required.

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

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

**§ 558.4 [Amended]**

2. Section 558.4 *Requirement of a medicated feed mill license* is amended in paragraph (d) in the ''Category I'' table in the entry for ''Ractopamine'' in the ''Assay limits percent[1] type B/C[2]'' column by removing ''80–110'' and adding in its place ''80–110/75–125''.

3. Section 558.500 is amended in paragraph (a) by removing ''9'' and adding in its place ''9 or 45'' and by revising the table in paragraph (d)(1) to read as follows:

**§ 558.500 Ractopamine.**

* * * * *

(d) * * *

(1) * * *

| Ractopamine grams/ton | Combination grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (i) 4.5 | | For increased rate of weight gain, improved feed efficiency, and increased carcass leanness in finishing swine fed a complete ration containing at least 16 percent crude protein from 150 pounds (lb) (68 kilograms (kg)) to 240 lb (109 kg) body weight. | Feed continuously as sole ration. Pigs fed PAYLEAN are at an increased risk for exhibiting the downer pig syndrome (also referred to as ''slows,'' ''subs,'' or ''suspects''). Pig handling methods to reduce the incidence of downer pigs should be thoroughly evaluated prior to initiating use of PAYLEAN. Not for use in breeding swine. | 000986 |
| (ii) 4.5 | Tylosin 100 | Finishing swine: As in paragraph (d)(1)(i) of this section; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *Lawsonia intracellularis*. | Feed continuously as sole ration for 21 days. Not for use in breeding swine. | 000986 |
| (iii) 4.5 to 18 | | For improved feed efficiency and increased carcass leanness in finishing swine fed a complete ration containing at least 16 percent crude protein from 150 lb (68 kg) to 240 lb (109 kg) body weight. | Feed continuously as sole ration. Pigs fed PAYLEAN are at an increased risk for exhibiting the downer pig syndrome (also referred to as ''slows,'' ''subs,'' or ''suspects''). Pig handling methods to reduce the incidence of downer pigs should be thoroughly evaluated prior to initiating use of PAYLEAN. Not for use in breeding swine. | 000986 |
| (iv) 4.5 to 18 | Tylosin 100 | Finishing swine: As in paragraph (d)(1)(iii) of this section; and for prevention and/or control of porcine proliferative enteropathies (ileitis) associated with *L. intracellularis*. | Feed continuously as sole ration for 21 days. Not for use in breeding swine. | 000986 |

(2) [Reserved]

Dated: July 9, 2002.

**Andrew J. Beaulieu,**

*Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 02–18365 Filed 7–19–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9005]**

**RIN 1545–BA87**

## Refund of Mistaken Contributions and Withdrawal Liability Payments

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document provides final regulations relating to the return of employer contributions or withdrawal liability payments made to multiemployer plans due to a mistake of fact or law. Changes to the applicable laws were made by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). The final regulations provide guidance to the public in complying with MPPAA. The regulations affect multiemployer plans which receive mistaken contributions or withdrawal liability payments.

**EFFECTIVE DATE:** These regulations are effective July 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** John T. Ricotta at (202) 622–6060 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 401(a)(2) generally requires a trust instrument forming part of a pension, profit sharing or stock bonus plan to prohibit the diversion of corpus or income for purposes other than the exclusive benefit of employees or their beneficiaries. Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93–406 (88 Stat. 829), contains a parallel rule that prohibits the assets of a plan from inuring to the benefit of any employer and that requires the plan assets be held for the exclusive purposes of providing benefits to plan participants and their beneficiaries and defraying reasonable expenses of administering the plan. Under these rules, employer contributions to qualified plans were generally not refundable. However, a contribution made due to a mistake of

fact was permitted to be returned to the employer within one year after the date of the contribution.

The Multiemployer Pension Plan Amendments Act of 1980 (Public Law 96–364, 410(b) (94 Stat. 1208,1308)) amended section 401(a)(2) of the Internal Revenue Code to reflect Congressional concern that the requirements of prior law for the return of an employer contribution were too narrow in the multiemployer context. Under section 401(a)(2), as amended, a contribution made to a multiemployer plan due to a mistake of fact or law may be returned within six months after the date that the plan administrator determines that it was made in error. Section 401(a)(2) was also amended by MPPAA to permit the return of any withdrawal liability payment determined to be an overpayment made due to a mistake of fact or law within six months after that determination.

The effective date of section 410(b) of MPPAA was January 1, 1975, except that in the case of any determination by a plan administrator made before September 26, 1980 (the date of enactment), that a past contribution was made by of mistake of fact or law was deemed to have been made on the date of enactment. Accordingly, the period of time for refund of these contributions was 6 months from the date of enactment.

The IRS published a notice of proposed rulemaking (EE–133–80) in the **Federal Register** on March 11, 1983, (48 FR 10374) to amend the Income Tax Regulations (26 CFR part 1) under section 401(a)(2) of the Internal Revenue Code of 1954 (Code). At that time, the public was invited to comment in writing, or to make a request for public hearing, upon issues addressed in the proposals. Eight comments were received, but no public hearing was requested.

The proposed amendment to the regulations would have been numbered § 1.401(a)-3. However, in the intervening period of time the IRS has changed its system of numbering regulations to more closely align the regulation number to the number of the underlying Code section. Accordingly, the regulations are being finalized as § 1.401(a)(2)-1.

After consideration of all comments, the proposed provisions are revised and adopted as final regulations under this Treasury decision.

**Explanation of Provisions**

In general, the final regulations follow the proposed regulations with minor changes described below.

1. *Amount to be refunded.* Several comments concerned the amount to be refunded to the employer when a determination of mistake is made by the plan administrator. Questions were raised relating to the earnings and losses attributable to the excess contribution or overpayment of withdrawal liability, and the Pension Benefit Guaranty Corporation rules regarding the refund of overpayments of withdrawal liability.

These final regulations provide a narrow exception to the general rule that trust assets not be used for, or diverted to, purposes other than the exclusive benefit of employees. That the employer may, under limited circumstances, receive a refund of a mistaken contribution does not detract from the primary purpose of ERISA to protect individual pension rights and maintain the solvency and integrity of pension funds.

In general, any earnings attributable to an excess contribution shall not be returned to the employer, and any losses attributable to an excess contribution must reduce the amount to be returned to the employer. As a further limitation on the return of contributions, the final regulations provide that a refund of an excess contribution must in no event reduce a participant's account balance in a defined contribution plan to an amount less than that amount which would properly have been in that participant's account had no mistake occurred.

In the case of an overpayment of withdrawal liability, established by the plan sponsor under section 4219(c)(2) of ERISA, the plan will not fail to satisfy section 401(a)(2) if, in accordance with Pension Benefit Guaranty Corporation regulations regarding the overpayment of withdrawal liability, the overpayment with interest is returned to the employer. (*See* 29 CFR Ch. XL 4219.31(d)).

2. *Amount to be included in income.* In general, the amount of the excess contribution or overpayment must be included in gross income by the employer if the excess contribution or overpayment resulted in a tax benefit in a prior year. Any interest credited or paid on the refund of mistaken withdrawal liability payments must also be included in gross income by the employer.

**Effective Date**

These regulations apply for refunds made after July 22, 2002. However, plans and employers may apply the rules of these regulations to refunds made prior to that date.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the preceding proposed rule was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

**Drafting Information**

The principal author of these regulations is John T. Ricotta, Office of the Division Counsel/ Associate Chief Counsel (Tax Exempt/Government Entities). However, other personnel from the Service and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * * § 1.401(a)(2)–1 also issued under Multiemployer Pension Plan Amendments Act, Public Law 96–364, 410, (94 Stat. 1208, 1308)(1980). * * *

**Par. 2.** Section 1.401(a)(2)–1 is added to read as follows:

**§ 1.401(a)(2)–1 Refund of mistaken employer contributions and withdrawal liability payments to multiemployer plans.**

(a) *Introduction*—(1) *In general.* Section 401(a)(2) provides that a contribution or payment of withdrawal liability made to a multiemployer plan due to a mistake of fact or mistake of law can be returned to the employer under certain conditions. This section specifies the conditions under which an employer's contribution or payment may be returned.

(2) *Effective dates.* This section applies to refunds made after July 22, 2002.

(b) *Conditions for return of contribution*—(1) *In general.* In the case of a contribution or a withdrawal liability payment to a multiemployer plan which was made because of a mistake of fact or a mistake of law, the

plan will not violate section 401(a)(2) merely because the contribution or payment is returned within six months after the date on which the plan administrator determines that the contribution or payment was the result of a mistake of fact or law. The contribution or payment is considered as returned within the required period if the employer establishes a right to a refund of the amount mistakenly contributed or paid by filing a claim with the plan administrator within six months after the date on which the plan administrator determines that a mistake did occur. For purposes of this section, plan administrator is defined in section 414(g) and the regulations thereunder.

(2) *Applicable conditions*—(i) *In general.* The employer making the contribution or withdrawal liability payment to a multiemployer plan must demonstrate that an excessive contribution or overpayment has been made due to a mistake of fact or law. A mistake of fact or law relating to plan qualification under section 401 or to trust exemption under section 501 is not considered to be a mistake of fact or law which entitles an employer to a refund under this section. For purposes of this section, a multiemployer plan is defined in section 414(f) and the regulations thereunder.

(ii) *Amount to be returned*—(A) *General rule.* The amount to be returned to the employer is the excess of the amount contributed or paid over the amount that would have been contributed or paid had no mistake been made. This amount is the excess contribution or overpayment. Except as provided in paragraph (b)(2)(ii)(B) of this section, interest or earnings attributable to an excess contribution shall not be returned to the employer, and any losses attributable to an excess contribution must reduce the amount returned to the employer. For purposes of the previous sentence, the application of plan-wide investment experience to the excess contribution would be an acceptable method of calculating losses. A refund of a mistaken contribution must in no event reduce a participant's account balance in a defined contribution plan to an amount less than that amount which would properly have been in that participant's account had no mistake occurred. Thus, to the extent that the refund of an excess contribution would reduce a participant's account balance in a defined contribution plan to an amount less than the amount which would properly be in the participant's account had no mistake occurred, the return of the excess contribution would be prohibited by this section.

(B) *Overpayment of withdrawal liability.* In the case of an overpayment of withdrawal liability established by the plan sponsor under section 4219(c)(2) of ERISA, the plan will not fail to satisfy section 401(a)(2) if, in accordance with Pension Benefit Guaranty Corporation regulations regarding the overpayments of withdrawal liability (29 CFR 4219.31(d)), the overpayment, with interest, is returned to the employer.

(c) *Amount refunded includible in employer's income.* In general, the amount of the excess contribution or overpayment must be included in gross income by the employer if the excess contribution or overpayment resulted in a tax benefit in a prior year. Any interest credited or paid on the refund of mistaken withdrawal liability payments must also be included in gross income by the employer.

(d) *Application of section 412.* An amount returned under paragraph (b)(2)(ii) of this section is charged to the funding standard account under section 412 in the year in which the amount is returned.

**David A. Mader,**

*Acting Deputy Commissioner of Internal Revenue.*

Approved: July 10, 2002.

**Pamela F. Olson,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 02–18019 Filed 7–19–02; 8:45 am]

**BILLING CODE 4830–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4003

**RIN 1212–AA97**

## Rules for Administrative Review of Agency Decisions

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation (''PBGC'') is amending its regulation on Administrative Review of Agency Decisions to expedite the appeals process by authorizing a single member of the PBGC's Appeals Board to decide routine appeals.

**EFFECTIVE DATE:** July 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW, Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** On March 27, 2002 (at 67 FR 14663), the PBGC published a proposed rule that would authorize a single member of PBGC's Appeals Board to decide routine appeals. The PBGC received no comments in response to the proposed rule and is issuing the final regulation without change.

Under the PBGC's regulation on Administrative Review of Agency Decisions (29 CFR part 4003), persons aggrieved by certain PBGC determinations may appeal to the PBGC Appeals Board, defined as ''a board consisting of three PBGC officials.''

The PBGC has been studying its administrative appeals process to see how it can accelerate appeals processing while continuing to protect the rights of appellants. Experience has shown that many appeals involve simple factual issues or call for application of well-settled legal principles. The PBGC believes that cases that do not raise a significant issue of law or a precedent-setting issue can be properly decided by a single Appeals Board member, thereby expediting the appeals process. Accordingly, this final rule authorizes any one member of the Appeals Board to act for the Board in routine cases as described in the rule. The PBGC will continue to use 3-member panels for cases that involve a significant issue of law or a precedent-setting issue. This would include, for example, a benefit determination appeal in which the decision is expected to affect the benefits of other persons.

### Compliance With Rulemaking Requirements

As a rule of agency organization, procedure, or practice, this rule is exempt from notice and public comment requirements. Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply to this rule. See 5 U.S.C. 601(2), 603, 604.

The PBGC has determined that good cause exists to dispense with the delayed effective date provisions of the Administrative Procedure Act as unnecessary. These amendments affect only the PBGC's processing of appeals and do not require any person other than the PBGC to take any action. Accordingly, the PBGC has decided to make these amendments effective immediately.

This rule is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

**List of Subjects in 29 CFR Part 4003**

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

For the reasons set forth above, the PBGC is amending 29 CFR part 4003 as follows.

## PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 4003 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3).

2. Add new § 4003.61 to read as follows:

**§ 4003.61 Action by a single Appeals Board member.**

(a) *Authority to act.* Notwithstanding any other provision of this part, any member of the Appeals Board has the authority to take any action that the Appeals Board could take with respect to a routine appeal as defined in paragraph (b) of this section.

(b) *Routine appeal defined.* For purposes of this section, a routine appeal is any appeal that does not raise a significant issue of law or a precedent-setting issue. This would generally include any appeal that—

(1) Is outside the jurisdiction of the Appeals Board (for example, an appeal challenging the plan's termination date);

(2) Is filed by a person other than an aggrieved person or an aggrieved person's authorized representative;

(3) Is untimely and presents no grounds for waiver or extension of the time limit for filing the appeal, or only grounds that are clearly without merit;

(4) Presents grounds that clearly warrant or clearly do not warrant the relief requested;

(5) Presents only factual issues that are not reasonably expected to affect other appeals (for example, the participant's date of birth or date of hire); or

(6) Presents only issues that are controlled by settled principles of existing law, including Appeals Board precedent (for example, an issue of plan interpretation that has been resolved by the Appeals Board in a decision on an appeal by another participant in the same plan).

Issued in Washington, DC, this 16th day of July, 2002.

**Elaine L. Chao,**

*Chairman, Board of Directors, Pension Benefit Guaranty Corporation.*

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

**James J. Keightley,**

*Secretary, Board of Directors, Pension Benefit Guaranty Corporation.*

[FR Doc. 02–18373 Filed 7–19–02; 8:45 am]

**BILLING CODE 7708–01–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 263

**RIN 1810–AA93**

## Indian Education Discretionary Grant Programs

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final regulations with request for comments.

**SUMMARY:** The Secretary amends the regulations that govern the competition of new Indian Education discretionary grant programs for fiscal year (FY) 2002. The programs governed by this part include grants for the Professional Development program and the Demonstration Grants for Indian Children program. These programs are authorized under Title VII of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001. These regulations identify eligible applicants for the program and the specific application and program requirements that must be met in order for applications to be considered for funding. These regulations also provide the requirements for the payback provisions that apply to the Professional Development program. These regulations will govern the grant application process for new FY 2002 awards under both programs, including the payback provisions for the Professional Development program.

**EFFECTIVE DATE:** These regulations are effective July 22, 2002.

We must receive your comments on or before August 21, 2002.

**ADDRESSES:** Address all comments concerning these regulations to Cathie Martin, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W111, Washington, DC 20202–6335. If you prefer to send your comments through the Internet, use the following address: *cathie.martin@ed.gov.*

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

**FOR FURTHER INFORMATION CONTACT:** Cathie Martin. Telephone: (202) 260–1683 or via Internet: *cathie.martin@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 contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:**

### Invitation To Comment

Although the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment, we are interested in whether you think we should make any changes in these regulations. We will consider these comments in determining whether to revise the regulations.

To ensure that your comments have maximum effect, we urge you to identify clearly the specific section or sections of the regulations that each of your comments addresses and to arrange your comments in the same order as the regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these regulations in room 3W115 at 400 Maryland Ave., SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these regulations. If you want to schedule an appointment for this type

of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**Background**

On January 8, 2002, the Demonstration Grants for Indian Children program and Professional Development program were revised and recodified as Sections 7121 and 7122 of Subpart 2 of Part A of Title VII of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by Pub. L. 107–110. These regulations incorporate the specific program requirements for both programs. They also include the application requirements for the Professional Development program that must be met in order for applications to be considered for funding and the requirements concerning the payback provisions applicable to that program.

*Executive Order 12866*

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 263.9 When does payback begin?)
- Could the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the regulations easier to understand? If so, how?
- What else could we do to make the regulations easier to understand?

Send any comments that concern how the Department could make these regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

*Waiver of Proposed Rulemaking*

Under the Administrative Procedures Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, in order to make timely grant awards in fiscal year (FY) 2002, the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment. These regulations will apply to the FY 2002 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

The small entities that are affected by these regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations will not have a significant economic impact on the small LEAs affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds.

*Paperwork Reduction Act of 1995*

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

*Intergovernmental Review*

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Assessment of Educational Impact*

The Secretary particularly requests comments on whether these regulations require transmission of information that any other agency or authority of the United States gathers or makes available.

*Electronic Access to This Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number 84.299 Indian Education—Special Programs)

**List of Subjects in 34 CFR Part 263**

Elementary and secondary education, Grant programs-education, Indians-education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: July 16, 2002.

**Susan B. Neuman,**

*Assistant Secretary for Elementary and Secondary Education.*

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising part 263 to read as follows:

## PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

### Subpart A—Professional Development Program

Sec.

263.1 What is the Professional Development program?
263.2 Who is eligible to apply under the Professional Development program?
263.3 What definitions apply to the Professional Development program?

263.4 What training costs may a Professional Development program include?
263.5 What priority is given to certain projects and applicants?
263.6 How does the Secretary evaluate applications for the Professional Development program?
263.7 What are the requirements for a leave of absence?
263.8 What are the payback requirements?
263.9 When does payback begin?
263.10 What are the payback reporting requirements?

**Subpart B—Demonstration Grants for Indian Children Program**

263.20 What definitions apply to the Demonstration Grants for Indian Children program?
263.21 What priority is given to certain projects and applicants?

**Authority:** 20 U.S.C. 7441 and 7442, unless otherwise noted.

## Subpart A—Professional Development Program

### § 263.1 What is the Professional Development program?

(a) The Professional Development program provides grants to eligible entities to—

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the education field.

(b) The Professional Development program requires individuals who receive training to—

(1) Perform work related to the training received under the program and that benefits Indian people, or to repay all or a prorated part of the assistance received under the program; and

(2) Report to the Secretary on the individual's compliance with the work requirement.

(Authority: 20 U.S.C. 7442)

### § 263.2 Who is eligible to apply under the Professional Development program?

(a) In order to be eligible for either pre-service or in-service training programs, an applicant must be an eligible entity which means —

(1) An institution of higher education, including an Indian institution of higher education;

(2) A State educational agency in consortium with an institution of higher education;

(3) A local educational agency in consortium with an institution of higher education;

(4) An Indian tribe or Indian organization in consortium with an institution of higher education; or

(5) A Bureau-funded school.

(b) Bureau-funded schools are eligible applicants for —

(1) An in-service training program; and

(2) A pre-service training program when the Bureau-funded school applies in consortium with an institution of higher education that is accredited to provide the coursework and level of degree required by the project.

(c) Eligibility of an applicant requiring a consortium with any institution of higher education, including Indian institutions of higher education, requires that the institution of higher education be accredited to provide the coursework and level of degree required by the project.

(Authority: 20 U.S.C. 7442)

### § 263.3 What definitions apply to the Professional Development program?

The following definitions apply to the Professional Development program:

*Bureau-funded school* means a Bureau school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of l988.

*Department* means the U.S. Department of Education.

*Dependent allowance* means costs for the care of minor children under the age of 18 who reside with the training participant and for whom the participant has responsibility. The term does not include financial obligations for payment of child support required of the participant.

*Expenses* means tuition and required fees; health insurance required by the institution of higher education; room, personal living expenses, and board at or near the institution; dependent allowance; and instructional supplies.

*Full course load* means the number of credit hours that the institution requires of a full-time student.

*Full-time student* means a student who —

(1) Is a degree candidate for a baccalaureate or graduate degree;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

*Good standing* means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

*Graduate degree* means a post-baccalaureate degree awarded by an institution of higher education beyond the undergraduate level.

*Indian* means an individual who is —

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements described in paragraph (a) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

*Indian institution of higher education* means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

*Indian organization* means an organization that —

(1) Is legally established —

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Has as its primary purpose the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

*Induction services* means services provided after the participant completes his or her training program and includes, at a minimum, these activities:

(1) Mentoring, coaching, and consultation services for the participant to improve performance,

(2) Access to research materials and information on teaching and learning,

(3) Periodic assessment of, and feedback sessions on, the participant's performance, provided in coordination with the participant's supervisor,

(4) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

*In-service training* means professional activities and opportunities designed to enhance the skills and abilities of individuals in their current areas of employment.

*Institution of higher education* means an accredited college or university within the United States that awards a baccalaureate or post-baccalaureate degree.

*Participant* means an Indian individual who is being trained under the Professional Development program.

*Payback* means work-related service or cash reimbursement to the Department of Education for the training received under the Professional Development program.

*Pre-service training* means training to Indian individuals to prepare them to meet the requirements for licensing or certification in a professional field requiring at least a baccalaureate degree.

*Professional development activities* means in-service training offered to enhance the skills and abilities of individual participants.

*Secretary* means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

*Stipend* means that portion of an award that is used for room and board and personal living expenses. **Note:** Only full-time students are eligible for stipends.

*Undergraduate degree* means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Authority: 20 U.S.C. 7442 and 7491)

### § 263.4 What training costs may a Professional Development program include?

(a) A Professional Development program may include, as training costs, assistance to either—

(1) Fully finance a student's educational expenses; or

(2) Supplement other financial aid—including Federal funding other than loans—for meeting a student's educational expenses.

(b) The Secretary announces the expected maximum amounts for stipends and other costs—including training costs—in the annual application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7442)

### § 263.5 What priority is given to certain projects and applicants?

(a) The Secretary awards a total of 5 points to an application submitted by an Indian tribe, Indian organization, or an Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization or Indian institution of higher education will be considered eligible to receive the 5 priority points.

(b) The Secretary awards a total of 5 points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agent for the application. The consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be considered eligible to receive the 5 priority points. These competitive preference points are in addition to the 5 competitive preference points that may be given under the paragraph (a) of this section.

(c) The Secretary may give absolute preference to applications, reserving all or a portion of the funds available for new awards under the Professional Development program, to fund only those applications that meet one of the following priorities selected for a fiscal year. The Secretary announces the absolute priority selected in the annual application notice published in the **Federal Register**.

(1) *Pre-Service Training for Teachers.* This priority provides support and training to Indian individuals to complete a pre-service education program that enables these individuals to meet the requirements for full State certification or licensure as a teacher through—

(i) Training that leads to a bachelor's degree in education before the end of the award period; or

(ii) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

(iii) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(iv) One-year induction services after graduation, certification, or licensure, provided during the award period to graduates of the pre-service program while they are completing their first year of work in schools with significant Indian student populations.

**Note to paragraph (c)(1):** In working with various institutions of higher education and State certification/licensure requirements, we found that states requiring a degree in a specific subject area (*e.g.,* specialty areas or teaching at the secondary level) generally require a Master's degree or fifth-year requirement before an individual can be certified or licensed as a teacher. These students would be eligible to participate as long as their training meets the requirements for full State certification or licensure as a teacher.

(2) *Pre-service Administrator Training.* This priority provides—

(i) Support and training to Indian individuals to complete a master's degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator; and

(ii) One year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work as administrators in schools with significant Indian student populations.

(Authority: 20 U.S.C. 7442 and 7473)

### § 263.6 How does the Secretary evaluate applications for the Professional Development program?

The following criteria, with the total number of points available in parenthesis, are used to evaluate an application for a new award:

(a) *Need for project (5) points.* In determining the need for the proposed project, the Secretary considers the following:

(1) The extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated,

(2) The extent to which specific gaps or weaknesses in local capacity to provide, improve, or expand services that address the needs of the community or region have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance (10) points.* In determining the significance of the proposed project, the Secretary considers the following:

(1) The potential contribution of the proposed project to increase effective strategies for teaching and student achievement,

(2) The likelihood that the proposed project will build local capacity to provide, improve, or expand services that address the needs of the target population,

(3) The likelihood that the proposed project will result in system change or improvement.

(c) *Quality of the Project Design (15) points.* The Secretary considers the

following factors in determining the quality of the design of the proposed project:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable,

(2) The extent to which the design of the proposed project reflects up-to-date knowledge from scientifically-based research and effective practices on how to improve teaching and learning to support student proficiency in meeting rigorous academic standards,

(3) The extent to which performance feedback and continuous improvement of participant performance are integral to the design of the proposed project,

(4) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing educational services to the population of students to be served by the participants.

(d) *Quality of Project Services (15) points.* The Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge of scientifically-based research and effective practice;

(2) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in the achievement of students as measured against rigorous academic standards;

(3) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of the training and project services provided.

(e) *Quality of project personnel (15) points.* The Secretary considers the following factors when determining the quality of the personnel who will carry out the proposed project.

(1) The qualifications, including relevant training and experience, of the project director.

(2) The qualifications, including relevant training and experience, of key project personnel.

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Adequacy of resources (10) points.* In determining the adequacy of support for the proposed project, the Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(2) The extent to which the costs are reasonable in relation to the design of the program, program objectives, number of persons to be served, and the anticipated results and benefits.

(3) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(g) *Quality of the management plan (15) points.* In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of procedures for ensuring feedback and continuous improvement in the performance of program participants in meeting the needs of the population they are to serve.

(2) The adequacy of the management plan to achieve the objectives of the proposed project during the award period, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(3) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to meet the objectives of the proposed project.

(h) *Quality of the project evaluation (15) points.* In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the context within which the project operates and the effectiveness of project implementation strategies.

(2) The extent to which the methods of evaluation will provide performance feedback on participants and permit periodic assessment of progress toward achieving the intended outcomes.

(3) The extent to which the methods of evaluation include the use of objective output measures that are directly related to the intended outcomes of the project and will produce both quantitative and qualitative data to the extent possible.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

### § 263.7 What are the requirements for a leave of absence?

(a) A participant shall submit a written request for a leave of absence to the project director not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the project director chooses to waive the prior notification requirement.

(b) The project director may approve a leave of absence, for a period not longer than one academic year, provided a training participant has successfully completed at least one academic year.

(c)The project director permits a leave of absence only if the institution of higher education certifies that the training participant is eligible to resume his or her course of study at the end of the leave absence.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

### § 263.8 What are the payback requirements?

(a) Individuals receiving assistance under the Professional Development are required to—

(1) Sign an agreement, at the time of selection for training, to meet the provisions of the payback requirement; and

(2) Perform work related to the training received and that benefits Indian people; or

(3) Repay all or a prorated part of the assistance received.

(b) The period of time required for a work-related payback is equivalent to the total period of time for which training was actually received under the Professional Development program.

(c) The cash payback required shall be equivalent to the total amount of funds received and expended for training received under these programs and may be prorated based on any approved work-related service the participant performs.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

### § 263.9 When does payback begin?

(a) For all participants who complete their training under the Professional Development program, payback shall begin within six months from the date of completion of the training.

(b) For participants who do not complete their training under the Professional Development Program, payback shall begin within six months from the date the fellow leaves the Professional Development program, unless he or she continues as a full-time student without interruption, in a program leading to a degree in an accredited institution of higher education.

(1) If the participant leaves the Professional Development program, but plans to continue his or her education as a full-time student, the Secretary may defer the payback requirement until the participant has completed his or her educational program. Written requests for deferment shall be submitted to the

Secretary within 30 days of leaving the Professional Development program and shall provide the following information—

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) After approval by the Secretary for deferment of the payback provision on the basis of continuing as a full-time student, former participants are required to submit to the Secretary a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

**§ 263.10 What are the payback reporting requirements?**

(a) *Notice of intent.* Participants shall submit to the Secretary, within 30 days of completion of their training program, a written notice of intent to complete a work-related or cash payback, or to continue in a degree program as a full-time student.

(b) *Work-related payback.* If the participant proposes a work-related payback, the written notice of intent shall include information explaining how the work-related service is related to the training received and how it benefits Indian people.

(1) For work-related service, the Secretary shall review each participant's payback plan to determine if the work-related service is related to the training received and that it benefits Indian people. The Secretary approves the payback plan if a determination is made that the work-related service to be performed is related to the training received and benefits Indian people, meets all applicable statutory and regulatory requirements, and is otherwise appropriate.

(2) The payback plan for work-related service shall identify where, when, the type of service, and for whom the work will be performed.

(3) A participant shall notify the Secretary in writing of any change in the work-related service being performed within 30 days of such change.

(4) For work-related payback, individuals shall submit a status report every six months beginning from the date the work-related service is to begin. The reports shall include a certification from the participant's employer that the service(s) have been performed without interruption.

(5) For participants that initiate, but cannot complete, a work-related payback, the payback reverts to a cash payback that is prorated based upon the amount of time the work-related payback has been completed.

(c) *Cash payback.* If a cash payback is to be made, the Department will contact the participant to establish an appropriate schedule for payments.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

## Subpart B—Demonstration Grants for Indian Children Program

**§ 263.20 What definitions apply to the Demonstration Grants for Indian Children program?**

The following definitions apply to the Demonstration Grants for Indian Children program:

*Federally supported elementary or secondary school for Indian students* means an elementary or secondary school that is operated or funded, through a contract or grant, by the Bureau of Indian Affairs.

*Indian* means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides; or

(2) A descendant of a parent or grandparent who meets the requirements described in paragraph (a) of this definition; or

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

*Indian institution of higher education* means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

*Indian organization* means an organization that:

(1) Is legally established:

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Has as its primary purpose the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

*Professional development activities* means in-service training offered to enhance the skills and abilities of individuals that may be part of, but not exclusively, the activities provided in a Demonstration Grants for Indian Children program.

(Authority: 20 U.S.C. 7441)

**§ 263.21 What priority is given to certain projects and applicants?**

(a) The Secretary awards a total of 5 competitive preference priority points to an application that presents a plan for combining two or more of the activities described in section 7121(c) of the Act over a period of more than one year.

(b) The Secretary awards a total of 5 competitive preference priority points to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Demonstration Grants for Indian Children program. A consortium of eligible entities that meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five (5) priority points. The written consortium agreement must be submitted with the application.

(c) The Secretary may give absolute preference to applications, reserving all or a portion of the funds available for new awards under the Demonstration Grants for Indian Children program, to fund only those applications that meet one or more of the following priorities selected for a fiscal year. The Secretary announces the absolute priority selected in the annual application notice published in the **Federal Register**.

(1) School readiness projects that provide age appropriate educational programs and language skills to three- and four-year old Indian students to prepare them for successful entry into school at the kindergarten school level.

(2) Early childhood and kindergarten programs, including family-based preschool programs, emphasizing school readiness and parental skills.

(3) College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including math and science, to enable Indian students to successfully transition to postsecondary education.

(Authority: 20 U.S.C. 7441 and 7473)

[FR Doc. 02–18305 Filed 7–19–02; 8:45 am]
BILLING CODE 4000–01–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1228

**RIN 3095–AB02**

### Records Disposition

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Correcting amendment.

**SUMMARY:** This document corrects NARA's rule on disposition of Federal records by correcting a reference to a section that has been redesignated.

**DATES:** Effective on July 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Kim Richardson at telephone number 301–837–2902 or fax number 301–837–0319.

**SUPPLEMENTARY INFORMATION:** NARA redesignated certain sections in Part 1228 in a rulemaking on December 2, 1999 (64 FR 67667). We inadvertently failed to amend § 1228.42 to reflect the redesignation of a referenced section. This amendment makes that correction to the CFR.

**List of Subjects in 36 CFR Part 1228**

Archives and records.

Accordingly, 36 CFR part 1228 is corrected by making the following correcting amendment:

## PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 continues to read as follows:

**Authority:** 44 U.S.C. chs. 21, 29, and 33.

**§ 1228.42 [Amended].**

2. In paragraph (d) of § 1228.42 revise the reference to ''§ 1228.200'' to read ''§ 1228.282''.

Dated: July 15, 2002.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 02–18327 Filed 7–19–02; 8:45 am]
BILLING CODE 7515–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 261–0362a; FRL–7247–8]**

### Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic solvents, organic solvent degreasing operations and organic solvent cleaning, storage and disposal. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This direct final rule is effective on September 20, 2002, without further notice, unless EPA receives adverse comments by August 21, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

**FOR FURTHER INFORMATION CONTACT:** Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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### I. The State's Submittal

*A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SJVUAPCD | 4661 | Organic Solvents | 12/20/01 | 02/20/02 |
| SJVUAPCD | 4662 | Organic Solvent Degreasing Operations | 12/20/01 | 02/20/02 |
| SJVUAPCD | 4663 | Organic Solvent Cleaning, Storage, and Disposal | 12/20/01 | 02/20/02 |

On March 15, 2002, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of These Rules?*

There are no previous versions of Rules 4662 and 4663 in the SIP, although the SJVUAPCD adopted earlier versions of rule 4661 on December 9, 1999, and CARB submitted it to us on February 23, 2000. We approved this version of Rule 4661 into the SIP on August 29, 2000. The SJVUAPCD

adopted revisions to the SIP-approved version of rule 4661 and adopted rules 4662 and 4663 on December 20, 2001 and CARB submitted them to us on February 20, 2002. The SJVUAPCD previously adopted rule 4662 on December 17, 1992 and CARB submitted it to us on July 23, 1999. The SJVUAPCD again adopted rule 4662 on April 19, 2001 and CARB submitted it to us on October 30, 2001. The EPA did not act on previous two submittals of rule 4662. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

*C. What Is the Purpose of the Submitted Rules?*

Rule 4661 regulates emissions of VOCs from a variety of sources and controls emissions of VOCs by limiting the amount of organic solvents that may be released into the atmosphere. This rule applies to any source operation that uses organic solvents and is not exempted by any other district rule(s). Rule 4662 controls emissions by limiting VOCs from organic solvent degreasing operations. This rule applies to all organic solvent degreasing operations except cleaning outside a degreaser. Rule 4663 controls emissions by limiting VOCs from organic solvent cleaning and from storage and disposal of solvents and waste solvent materials. This rule applies to any organic solvent cleaning performed outside a degreaser during the production, repair, maintenance, or servicing of parts, products, tools, machinery, equipment, or in general work areas at stationary sources. It also applies to the storage and disposal of all solvents and waste solvent materials at stationary sources. The technical support documents (TSDs) have more information about these rules.

**II. EPA's Evaluation and Action**

*A. How Is EPA Evaluating the Rules?*

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The SJVUAPCD regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rules 4661, 4662, and 4663 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. *Issues Relating to VOC Regulation, Cut Points, Deficiencies, and Deviations: Clarifications to Appendix D of November 24, 1987* ***Federal Register***. EPA, May 25, 1988 (the ''Blue Book'').

2. *Control of Volatile Organic Emissions from Solvent Metal Cleaning.* EPA–450/2–77–022, November 1977.

3. *Determination of Reasonably Available Control Technology and Best Available Control Technology for Organic Solvent Cleaning and Degreasing operations. CARB,* July 18, 1991.

4. *Guidance Document for Correcting VOC Rule Deficiencies.* EPA Region IX, August 21, 2001 (the ''Little Blue Book'').

*B. Do the Rules Meet the Evaluation Criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

*C. EPA Recommendations To Further Improve the Rules*

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 21, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 20, 2002. This will incorporate these rules into the federally enforceable SIP.

Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**III. Background Information**

*Why Were These Rules Submitted?*

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

| Date | Event |
|---|---|
| March 3, 1978 | EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305. |
| May 26, 1988 | EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act. |
| November 15, 1990 | Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. |
| May 15, 1991 | Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date. |

**IV. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that these rules will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because these rules approve pre-existing requirements under state law and do not impose any additional enforceable duty beyond that required by state law, they do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Dated: July 2, 2002.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(294)(i)(A)(*4*) to read as follows:

### § 52.220 Identification of plan.

* * * * *

(c) * * *

(294) * * *

(i) * * *

(A) * * *

(*4*) Rule 4661, adopted on May 21, 1992 and amended on December 20, 2001, Rule 4662, adopted April 11, 1991 and amended on December 20, 2001, and Rule 4663, adopted on December 20, 2001.

* * * * *

[FR Doc. 02–18398 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 82

**[FRL–7247–5]**

**RIN 2060–AG12**

## Protection of Stratospheric Ozone; Listing of Substitutes in the Foam Sector

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This action lists acceptable and unacceptable substitutes for ozone-depleting substances (ODSs) in the foam blowing sector under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. Today's action: Withdraws the proposed decision to list HCFC–22 and HCFC–142b as unacceptable substitutes for existing users; lists HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in rigid polyurethane/polyisocyanurate laminated boardstock, rigid polyurethane appliance foam, and rigid polyurethane spray foam applications; lists HCFC–22 and HCFC–142b as acceptable substitutes for HCFC–141b, with narrowed use limits (users must ascertain and document that other acceptable alternatives are not technically feasible) in commercial refrigeration and sandwich panel applications and in the rigid polyurethane slabstock and other foams end-use; and lists HCFC–124 as an unacceptable substitute in all foam end-uses. At this time, EPA is deferring final action on its proposed decision to list HCFC–141b as an unacceptable foam blowing agent.

**EFFECTIVE DATE:** August 21, 2002.

**ADDRESSES:** Information relevant to this rulemaking is available in Docket A–2000–18, U.S. Environmental Protection Agency, OAR Docket and Information Center, 401 M Street, SW., Room M–1500, Mail Code 6102, Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Jeff Cohen at phone: (202) 564–0135, fax

(202) 565–2155 or e-mail: *cohen.jeff@epa.gov,* U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW., Washington, DC 20001. The Stratospheric Protection Hotline can be contacted at (800) 296–1996. Additional information can also be obtained through EPA's Ozone Depletion World Wide Web site at ''*http://www.epa.gov/ozone/snap/index.html*''.

**SUPPLEMENTARY INFORMATION:** SNAP implements section 612 of the Clean Air Act which requires EPA to evaluate substitutes for ODSs to reduce overall risk to human health and the environment. The intended effect of the SNAP program is to expedite movement away from ozone-depleting compounds while avoiding a shift into substitutes posing other environmental problems. On March 18, 1994, EPA promulgated the initial SNAP rule establishing the program for evaluating and regulating substitutes for ozone depleting chemicals (59 FR 13044), and has since issued decisions on the acceptability and unacceptability of a number of substitutes.

In February 1999, EPA received a submission requesting review of the following foam blowing agents as substitutes for HCFC–141b: HFC–134a, HCFC–22, HCFC–142b, HCFC–124, and an HCFC–22/142b blend. In response, EPA proposed the following two determinations: (1) listing HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in all foam end-uses; and (2) listing HCFC–124 as unacceptable in all foam end-uses (65 FR 42653). EPA did not address the use of HFC–134a in the proposal because HFC–134a was already listed as an acceptable substitute for HCFC–141b (64 FR 30410). In addition, EPA proposed to list HCFC–141b, –22, and –142b as unacceptable in all foam end-uses with existing users grandfathered until 2005.

During the official comment period for the proposal, EPA received approximately 45 comments on the proposal (Docket A–2000–18). After the comment period closed, EPA acquired additional information pertaining to the availability and technical viability of alternatives, and the market size and potential economic impact of the proposal on various sub-sectors of the foam industry. This information was obtained through meetings held at the request of industry representatives, letters sent from members of Congress, letters sent directly to the Agency, and through EPA's own efforts to obtain additional information in order to fully address comments received during the comment period. On May 23, 2001, the Agency published a Notice of Data Availability (NODA) making this new information available for public review and comment (66 FR 28408). The comment period for the NODA ended on June 22, 2001.

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## I. Section 612 Program

### *A. Statutory Requirements*

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

### *B. Regulatory History*

On March 18, 1994, EPA published a rule (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam manufacturing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting compounds.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.

### *C. Listing Decisions*

Under section 612, the Agency has considerable discretion in the risk management decisions it can make

under the SNAP program. In the SNAP rule, the Agency identified four possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Fully acceptable substitutes, *i.e.,* those with no restrictions, can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risk to human health and the environment. Such substitutes are described as ''acceptable subject to use conditions.'' Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act and the SNAP regulations.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation must include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. The use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit is unacceptable and violates section 612 of the CAA and the SNAP regulations.

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings (59 FR 13044). Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

As described in the original March 18, 1994 rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes. In this final rule, EPA is issuing its decision on the acceptability of certain substitutes in the foams blowing sector. Today's rule finalizes and incorporates decisions that were proposed on July 11, 2000 at 65 FR 42653 (referred to hereinafter as ''the proposal''). The section below presents a detailed discussion of the determinations that are made final in today's Final Rule.

## II. Listing Decisions on Foam Sector Substitutes

A major goal of the SNAP program is to facilitate the transition away from ozone-depleting substances. In 1994, EPA listed hydrochlorofluorocarbons (HCFCs), such as HCFC–141b, –22, and –142b, as acceptable replacements for CFCs because the Agency believed that HCFCs provided a temporary bridge to alternatives that do not deplete stratospheric ozone (''ozone-friendly''). At that time, EPA believed that HCFCs were necessary transitional alternatives to CFC blowing agents in thermal insulating foam (59 FR 13083). Since then, HCFC–141b, –22, and –142b have become the most common foam blowing agents. HCFCs are slated for phaseout under the Clean Air Act and Montreal Protocol on Substances that Deplete the Ozone Layer,[1] and the Agency has identified several alternatives to HCFC blowing agents, including hydrofluorocarbons (HFCs), hydrocarbons, carbon dioxide, and other compounds as acceptable substitutes in the foam blowing sector. In some foam end-uses, these alternatives have been tested and implemented in finished products that are on the market. In others, foam manufacturers are still working to formulate, test, and implement the alternatives to HCFCs in manufacturing processes.

On July 11, 2000, EPA proposed action regarding the acceptability of certain HCFCs in the foam sector. EPA subsequently solicited additional comment in a Notice of Data Availability issued on May 23, 2001. Today, EPA is making final decisions regarding the acceptability of those substitutes. EPA's decisions are based on the technical viability of alternatives, timing and availability of alternatives, the need for products that maintain thermal efficiency, structural integrity, and safety, and the potential economic implications. Table A summarizes today's final actions by foam sector end-use.

TABLE A.—TODAY'S FINAL ACTION BY FOAM END-USE

| Foam end-use | HCFC blowing agent in use | Today's final action |
|---|---|---|
| Rigid Polyurethane/ Polyisocyanurate Laminated Boardstock. | HCFC–141b | (1) HCFC–141b: No Action.<br>(2) HCFC–22, –142b, –124: Unacceptable Substitutes for HCFC–141b. |
| Rigid Polyurethane Appliance Foam | HCFC–141b (some HCFC–22 and HCFC–142b). | (1) HCFC–141b: No Action.<br>(2) HCFC–22: Remains an Acceptable Substitute for CFCs.<br>(3) HCFC–22, –142b, –124: Unacceptable Substitutes for HCFC–141b. |
| Rigid Polyurethane Spray Foam | HCFC–141b | (1) HCFC–141b: No Action.<br>(2) HCFC–22, –142b: Unacceptable Substitutes for HCFC–141b.<br>(3) HCFC–124: Unacceptable Substitute. |

[1] The phaseout schedule was established on December 10, 1993 (58 FR 65018) as authorized under section 606 of the Clean Air Act. The phaseout for HCFCs currently used as foam blowing agents range from January 1, 2003 to January 1, 2010.

TABLE A.—TODAY'S FINAL ACTION BY FOAM END-USE—Continued

| Foam end-use | HCFC blowing agent in use | Today's final action |
|---|---|---|
| Rigid Polyurethane Commercial Refrigeration and Sandwich Panels. | HCFC–141b, –22, and HCFC–142b. | (1) HCFC–141b: No Action.<br>(2) HCFC–22, –142b: Remain Acceptable Substitutes for CFCs.<br>(3) HCFC–22, –142b: Acceptable Substitutes for HCFC–141b Subject to Narrowed Use Limits.*<br>(4) HCFC–124: Unacceptable Substitute. |
| Rigid Polyurethane Slabstock and Other Foams. | HCFC–141b (some HCFC–22) ..... | (1) HCFC–141b: No Action.<br>(2) HCFC–22, –142b: Acceptable Substitutes for HCFC–141b Subject to Narrowed Use Limits*.<br>(3) HCFC–124: Unacceptable Substitute. |
| Extruded Polystyrene ..... | HCFC–142b (some HCFC–22) ..... | (1) HCFC–142b, –22: Remain Acceptable Substitutes for CFCs.<br>(2) HCFC–124: Unacceptable Substitute. |
| Polyolefin ..... | HCFC–142b ..... | (1) HCFC–142b: Remains an Acceptable Substitute for CFCs.<br>(2) HCFC–124: Unacceptable Substitute. |

*Users must maintain records outlining technical/economic constraints that prevent switching from HCFC–141b to non-ozone-depleting alternatives.

*A. HCFC–141b*

Summary of Proposal

On March 18, 1994, EPA listed HCFC–141b as an acceptable substitute for CFCs in various foam end-uses. A number of foam manufacturers switched from CFC–11 and CFC–113 to HCFC–141b. Since that time, EPA has listed several non-ozone-depleting alternatives as acceptable replacements for HCFC–141b. In the July 11, 2000 proposal, EPA proposed to change its previous decision of acceptability such that use of HCFC–141b would be unacceptable for foam manufacture (65 FR 42653). However, for existing users, such use would be grandfathered until January 2005 (*i.e.,* existing users could continue to use HCFC–141b as a foam blowing agent until January 2005). The Agency believed that this time period was sufficient for these end-users to transition to non-ozone-depleting alternative foam blowing agents, taking into consideration the impending production phaseout of HCFC–141b effective January 1, 2003.

Summary of Final Action

EPA is deferring its decision on whether to list HCFC–141b as an unacceptable substitute for CFCs in foam blowing end uses. This decision does not in any way affect the January 1, 2003 phaseout deadline for the production and import of HCFC–141b, previously established on December 10, 1993 (58 FR 65018), to reduce U.S. HCFC consumption in accordance with section 606 of the Clean Air Act and the Montreal Protocol.

After the comment period for the July 11, 2000 proposal closed September 11, 2000, EPA acquired additional information pertaining to the availability and technical viability of alternatives and the market size and economic impact of the proposal on various industries. This information was obtained through meetings held at the request of industry representatives, letters sent through congressional representatives, letters sent directly to the Agency, and through EPA's own efforts to obtain additional information in order to fully address comments received during the comment period. The Agency published a Notice of Data Availability (NODA) on May 23, 2001 making the additional information pertaining to the foam industry available for public comment (66 FR 28408). As part of the proposed HCFC allowance allocation rulemaking, the Agency has also received comments and information pertaining to the use and availability of HCFCs and alternatives in the foam industry (66 FR 38064). The proposed HCFC allowance system is intended to control the U.S. production and consumption of class II controlled substances, the hydrochlorofluorocarbons (HCFCs) in accordance with U.S. obligations under the Montreal Protocol.

Several commenters on the proposed SNAP rule suggested that EPA should not list HCFC–141b as unacceptable for existing users because of a lack of feasible alternatives. In fact, these commenters, as well as commenters on the proposed HCFC allocation rule, requested that the Agency extend the January 1, 2003 phaseout deadline for production of HCFC–141b for use in specific applications such as spray foam. As part of the separate regulatory program governing HCFC production and allocations under sections 605 and 606 of the Clean Air Act (66 FR 38081), the Agency will address the comments pertaining to limited, continued production of HCFC–141b for use in applications where feasible alternatives are not yet fully developed and available. A final HCFC allocation rule is expected to be published by the fall of 2002. More detailed and up-to-date information on this issue can be found on EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/title6/phaseout/hcfc141b.html.*

Because a decision on exempted HCFC–141b production will have implications for continued use of HCFC–141b in the foam industry, we are deferring a final decision on the use of HCFC–141b. By deferring, EPA is allowing continued use of stockpiled HCFC–141b (produced prior to January 1, 2003) and use of limited amounts of HCFC–141b that may be produced after January 1, 2003 to address technical constraints of some existing HCFC–141b users.

*B. HCFC–22, HCFC–142b and Blends Thereof*

Summary of Proposal

In the July 11, 2000 proposal, EPA proposed to list HCFC–22, HCFC–142b and blends thereof as unacceptable in all foam end-uses; existing use of HCFC–22/HCFC–142b would have been grandfathered until January 1, 2005. On

March 18, 1994, EPA listed these HCFCs as acceptable substitutes for CFC–11, –12, –113, and –114 in various foam end-uses. A number of foam manufacturers switched from those CFCs to HCFC–22 and HCFC–142b as transitional blowing agents. Since that time, EPA has listed several non-ozone-depleting substitutes as acceptable replacements for HCFCs. Under the proposal, companies not currently using HCFC–22 or HCFC–142b would be prohibited from switching to HCFC–22 or HCFC–142b while existing users of HCFC–22 and HCFC–142b could continue to use HCFC–22 and HCFC–142b as foam blowing agents, but only until January 1, 2005. The Agency believed that time period was sufficient time for existing users to transition from HCFC–22 and HCFC–142b to non-ozone depleting alternative foam blowing agents.

Summary of Final Action

Based on comments received on the proposal and NODA, the Agency is taking the following final actions today: (1) Withdrawing its proposed decision to list HCFC–22 and HCFC–142b as unacceptable substitutes for CFCs (*i.e.,* existing users of these chemicals can continue use); (2) listing HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in rigid polyurethane/polyisocyanurate laminated boardstock, rigid polyurethane appliance, and rigid polyurethane spray foam applications; and (3) listing HCFC–22 and HCFC–142b as acceptable substitutes, with narrowed use limits, for HCFC–141b in commercial refrigeration, sandwich panels, and rigid polyurethane slabstock and other foams applications.

EPA is withdrawing the proposal to restrict existing use of HCFC–22 and HCFC–142b as substitutes for CFCs because the Agency believes there are technical and economic constraints in switching to ozone-friendly alternatives for these users within the next several years. Foam manufacturers who are existing users of HCFC–22 and HCFC–142b can continue to use these HCFCs but only under the conditions described here. Existing use is defined as current use of HCFC–22 and/or HCFC–142b to manufacture actual foam products that are sold into commercial markets and meet all relevant code approvals, where required, prior to the date of publication of this final rulemaking. Manufacturers who have conducted trials or limited production runs are not considered existing users. Foam manufacturers who use HCFC–141b in blends with HCFC–22 or HCFC–142b may continue to use the current percentage by weight of HCFC–22 and HCFC–142b based on the overall formulation. However, in those end-uses identified in today's action where substitution of HCFC–141b with HCFC–22 or HCFC–142b is unacceptable (rigid polyurethane/polyisocyanurate laminated boardstock, rigid polyurethane appliance, and rigid polyurethane spray foam applications), foam manufacturers may not replace HCFC–141b in current formulations with HCFC–22 or HCFC–142b. In these end-uses, HCFC–141b can only be replaced by SNAP approved alternatives. For example, if a formulation contains 8% HCFC–141b (by weight) and 2% HCFC–22 (by weight), the user cannot increase the total content of HCFC–22 in the formulation when replacing HCFC–141b with other SNAP approved alternatives. In addition to combined use of HCFC–141b and HCFC–22 in blends, EPA recognizes that a manufacturer may run separate production lines, some with HCFC–141b and some with HCFC–22, or may have multiple production facilities. Although such a manufacturer is an existing user of HCFC–22/HCFC–142b for some production lines, he may not convert the HCFC–141b lines or facilities, in whole or part, to HCFC–22 or HCFC–142b, except for those end-uses in which such substitution is deemed acceptable, subject to narrowed use limits (*e.g.,* commercial refrigeration, sandwich panels, and rigid polyurethane slabstock). In those end-uses where substitution of HCFC–141b with HCFC–22 or HCFC–142b is deemed unacceptable, SNAP approved alternatives for HCFC–141b must be used in those lines or facilities.

In today's action, EPA is also addressing use of HCFC–22 and HCFC–142b as replacements for HCFC–141b. EPA is finalizing its proposed determination that HCFC–22 and HCFC–142b are unacceptable as replacements for HCFC–141b in polyurethane boardstock and spray foam, and appliance end-uses; as of the effective date of this rule, these HCFCs cannot be used as substitute foam blowing agents for HCFC–141b. EPA believes that polyurethane boardstock, spray foam, and appliance manufacturers have identified and, in many cases, implemented viable non-ozone-depleting alternatives to HCFC–141b.

For commercial refrigeration and sandwich panel applications, and the polyurethane slabstock and other foams end-use, EPA is listing HCFC–22 and HCFC–142b, with narrowed use limits, as acceptable replacements for HCFC–141b. These end-uses are comprised of a wide range of diverse applications with unique technical considerations and fragmented HCFC use. EPA is strongly opposed to listing HCFCs as acceptable where non-ozone-depleting alternatives are available. However, EPA believes that ozone-friendly alternatives to HCFC–141b have not yet been fully developed and implemented across the spectrum of applications within these end-uses. In these situations, EPA believes switching to HCFC–22 and/or HCFC–142b as a bridge to non-ozone-depleting alternatives presents a lower risk than continued use of HCFC–141b.

In prior SNAP program regulations, substitutes have been permitted under a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. The narrowed use limit means that users intending to adopt HCFC–22 or HCFC–142b, and blends thereof in the commercial refrigeration and sandwich panels, and the ''slabstock and other foams'' end-uses, must ascertain that other acceptable alternatives are not technically feasible. These narrowed use requirements are summarized in a table at the end of this document and will be incorporated into Appendix J, Subpart G of the Code of Federal Regulations (CFR) at 40 CFR part 82. Under these provisions, companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation must include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.,* performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. The use of HCFC–22, HCFC–142b, and blends thereof in applications which are not specified as acceptable in the narrowed use limit is considered unacceptable and violates section 612 of the CAA and the SNAP regulations. In addition, foam manufacturers should be aware that EPA is continuing to review the commercial refrigeration, and sandwich panels and slabstock and other foams end-uses to determine the progress of non-ozone-depleting alternatives. As non-ozone-depleting alternatives become more widely available, the Agency will reevaluate the acceptability of HCFCs in these end-uses. Therefore, foam manufacturers within these applications that are using HCFCs should begin using non-ozone-depleting alternatives as soon as they are available in anticipation of future EPA action restricting the use of HCFCs.

*C. HCFC–124*

Summary of Proposal

In the July 11, 2000 proposal, EPA proposed to list HCFC–124 as unacceptable in all foam end-uses. Because HCFC–124 has never been listed as an acceptable foam blowing substitute for CFCs, EPA believed there were no current users of the chemical and, therefore, did not address existing users separately.

Summary of Final Action

Today's final rule lists HCFC–124 as unacceptable in all foam end-uses. Although HCFC–124 has a lower ODP than HCFC–141b, it was never submitted as a replacement for CFCs and therefore has never been commercialized for use as a blowing agent in the U.S. EPA is not aware of any uses of HCFC–124 as a foam blowing agent anywhere in the world. Comments on the proposal indicate that HCFC–124 has been tested on a limited scale as a foam blowing agent for rigid polyurethane foam only in the appliance industry. EPA believes that introduction of an HCFC into the foams industry to replace an existing HCFC is not necessary or appropriate in light of the ability of the appliance industry to convert directly from HCFC–141b to technically viable zero-ODP foam blowing alternatives.

**III. Response to Comments**

*A. HCFC–141b*

Because EPA is not taking final action today on its proposed decision to list HCFC–141b as unacceptable, the Agency is not responding to comments at this time. However, EPA would like to note the following issues raised in comments: (1) Import of pre-blended HCFC–141b polyurethane systems; and (2) use of stockpiled HCFC–141b. Commenters' concerns are summarized below along with EPA's preliminary views on these issues and information on the Agency's regulatory authority to address them.

Some commenters expressed concern that there was a potential for HCFC–141b, produced in the U.S. after the production ban for domestic use but subsequently exported from the U.S., to be re-imported in pre-blended polyurethane systems and used to produce foam in the U.S. Polyurethane foam systems generally consist of two components. One contains polyols, surfactants, blowing agents and other chemicals, the other contains isocyanate. These components are mixed on site to produce foam. Information specifically addressing or referencing these issues can be found in Air Docket A–2000–18 reference numbers IV–E–7, IV–D–80, IV–D–93, and IV–D–96. Currently there are no regulations prohibiting insulating foam products containing HCFC–141b from being sold in the U.S. after January 1, 2003.[2]

These comments are outside the scope of the present rulemaking. However, EPA will continue to monitor the situation closely and collect information in order to decide if any action is necessary and if so, the appropriate timing of such action. Available information does not now indicate the extent to which import of HCFC–141b systems may occur. However, if this activity becomes widespread and compromises or undermines the intent of the U.S. HCFC–141b phaseout, disadvantaging companies that have made good faith investments in developing and implementing alternative technologies, EPA could consider establishing a SNAP use restriction under section 612 of the Clean Air Act or other appropriate actions; expanding the definition of ''controlled product'' or ''bulk substance'' under the U.S. phaseout regulations at 40 CFR part 82 to specifically address polyurethane pre-polymers; and/or establishing a labeling requirement under section 611 of the Clean Air Act for foams blown with HCFC–141b and any products containing such foam. These labels would inform the public that these products contain HCFC–141b, an ozone-depleting chemical that destroys stratospheric ozone. Other possible actions that could occur if the import of pre-blended HCFC–141b systems is seen to be compromising the U.S. phaseout of HCFC–141b include: (1) Section 610 of the Clean Air Act could be amended to remove the exemption for foam insulation products which would allow EPA to restrict the sale and distribution of products containing HCFC–141b; and (2) international discussions under the Montreal Protocol might result in a re-classification of polyurethane pre-polymers to include all pre-blended polyurethane systems as controlled bulk substances subject to the import restrictions or other such changes that could prevent import of pre-blended polyurethane systems.

Another issue identified in the NODA was the potential for users to stockpile large enough quantities to delay the transition from HCFC–141b to non-ozone-depleting chemicals. Comments in the docket show that there are conflicting views on the amount of HCFC–141b that could be stockpiled for use after January 1, 2003. Some comments stated that the amount of HCFC–141b that could be stockpiled was limited by production and storage capacity and those limitations would prevent use of HCFC–141b after 2005 regardless of EPA's proposed unacceptability listing. Opposing this position, a commenter estimated that enough HCFC–141b could be collected, stockpiled, and sold to last more than 5 years past the production phaseout date.

The Agency does not have evidence that use of stockpiled HCFC–141b will significantly impede the transition away from HCFC–141b after the production phaseout. As the phaseout nears and access to HCFC–141b becomes more limited, the Agency believes that greater numbers of HCFC–141b users who have not yet transitioned to alternatives will do so. EPA encourages foam manufacturers to follow the lead of the polyisocyanurate boardstock industry, certain appliance manufacturers, and other foam manufacturers that are undertaking commendable efforts to transition to ozone-friendly alternatives. EPA will continue to monitor the situation closely and collect information in order to decide if any action is necessary and if so, the appropriate timing. The Agency may address this issue in more detail at the time we address the question of limited, continued production of HCFC–141b as part of the HCFC allocation rulemaking.

*B. Existing Use of HCFC–22 and HCFC–142b*

In today's action, EPA is withdrawing its proposal to list HCFC–22 and HCFC–142b as unacceptable substitutes for CFCs. Comments on the July 11, 2000 proposal and May 23, 2001 NODA regarding existing use of HCFC–22 and HCFC–142b fall under the following four summarized statements which are addressed in detail below:

1. Alternatives to HCFC–22 and HCFC–142b have not been fully developed for U.S. foam markets and, therefore, they are not technically viable for existing users of these chemicals.

2. There would be a significant impact on small businesses if EPA finalized its proposed action to list HCFC–22 and HCFC–142b as unacceptable for existing users.

[2] Foam products which contain or are manufactured with HCFCs are currently banned from sale or distribution into interstate commerce under section 610 of the Clean Air Act. However, section 610 exempts foam insulation from this ban. Foam insulation products are defined as product containing or consisting of the following closed cell rigid foam types: polyurethane, polystrene boardstock, phenolic, and polyethylene foam used for pipe insulation.

3. EPA should not de-list chemicals without new evidence suggesting that these chemicals are more harmful than previously known or that eliminating their use would benefit the environment.

4. EPA should not use the SNAP program to accelerate the phaseout of HCFC–22 and HCFC–142b.

1. Technical Viability of Alternatives

EPA's proposal was based on published and other publicly available information indicating that technically viable alternatives to HCFC–22 and HCFC–142b are available in all foam end-uses. Although some commenters agreed with EPA and supported the proposed decision, many commenters argued that EPA had insufficient data and that technically viable alternatives are not available. Commenters who disagreed with EPA recommended that EPA withdraw portions of the proposal that would affect existing users of HCFC–22 and HCFC–142b or extend the grandfathering period, for example, to 2008 instead of 2005. Based on these comments, EPA decided to collect more information in those foam sectors where publicly available information and published literature are limited. This additional information was made available for public review in a May 23, 2001 Notice of Data Availability (NODA) (66 FR 28408). The NODA included a technical analysis of comments received from the extruded polystyrene industry and a review of challenges facing the polyurethane spray foam industry and other systems house based applications. Both of these reports can be found in Docket A–2000–18, reference number IV–D–77 and IV–D–78, respectively.[3]

The polystyrene industry represents the largest foam end-use of HCFC–142b, with some minor HCFC–22 use. Key concerns raised during the comment periods relate to the technical feasibility of alternatives coupled with the cost and timing of the transition to non-ozone depleting chemicals. Polystyrene manufacturers commented that while zero-ODP alternatives have been implemented in Europe, conversion to non-HCFC alternatives in the U.S. would require more than 5 years of research and development due to differences in building codes and product requirements. The major challenges facing the polystyrene industry relate to balancing density and thickness (*i.e.,* insulation value) of the foam and compliance with safety requirements. For example, current building codes limit the use of polystyrene to either thin, high density foam or thicker, low density foam. Any changes that result in higher density or lower R-value (thicker) foam would result in products that cannot meet current building codes. Existing building codes are not expected to be revised in the near future and EPA agrees with comments indicating that it could take longer than 4 years to finalize the development of new codes to account for increased ''fire loads'' (*i.e.,* denser or thicker foam) that the polystyrene industry indicates would result from switching to non-HCFC alternatives.

The technical analysis of comments received from the extruded polystyrene industry, Air Docket A–2000–18, IV–D–77, shows that the polystyrene industry needs to maximize its efforts between now and 2010 in order to transition to alternatives in time for the HCFC–22/HCFC–142b production phaseout. EPA believes that research and development to modify existing blowing agent options and/or building codes in the U.S., and to also conduct trials and plant modifications, could take up to 8 years. EPA urges polystyrene manufacturers to examine research and development applied in Europe to further develop non-HCFC blowing agent options in order to achieve foam densities and insulation values that will meet building codes and be marketable in the U.S. at the earliest possible date. The Agency will continue to monitor the development of alternatives in the polystyrene sector and work with this industry to establish a time-frame for transitioning away from HCFCs.

As indicated in footnote 3 above, end-uses other than polystyrene account for a small percentage of the total existing HCFC–22 and HCFC–142b use in the foam industry. HCFC–22 and HCFC–142b are used in polyurethane appliance, commercial refrigeration, sandwich panels, and slabstock and other foam end-uses. Many comments on the July 11, 2000 proposal stated that EPA had not identified all entities potentially affected by the proposed HCFC–22/HCFC–142b restrictions or failed to assess the impact of the proposal on these users, many of which are small businesses. In response to comments, EPA expanded its effort to identify users of HCFC–22 and HCFC–142b and analyze the current status of alternatives in these applications. EPA reviewed comments and hired a foam industry expert to collect information from spray polyurethane foam representatives and systems house representatives on the viability of alternatives in each application that could be identified. Due to the fragmentation of the industry, it was difficult to identify specific applications, blowing agents used, and the viability of alternatives for each end-user.

In developing the proposed rule, based on information available to the Agency at the time, we concluded that non-ozone-depleting chemicals which reduce the risk to human health and the environment were available as replacements, and that existing users of HCFC–22 and HCFC–142b could switch to these alternatives. Based on comments and EPA's data collection efforts, the Agency learned that HCFC–22/HCFC–142b alternatives have been identified and developed by some polyurethane foam manufacturers. However, due to unique technical considerations for many HCFC–22/HCFC–142b users in the polyurethane industry, EPA believes that technically viable alternatives cannot be implemented across the spectrum of applications at this time. Consequently, EPA believes that for many polyurethane manufacturers that have been relying on HCFC–22 and HCFC–142b, switching to alternatives by 2005 would be difficult and prohibitively costly.

Thus, because of the infeasibility in the near term of alternatives for existing users in the polystyrene industry and the availability and technical viability of alternatives in other end-uses, EPA is withdrawing the proposed restriction on HCFC–22 and HCFC–142b for existing users. However, EPA believes that there are certain polyurethane applications, particularly non-insulating applications, that may currently have technically viable alternatives that are economically feasible. EPA is conducting a complete review of the spray, commercial refrigeration, and sandwich panels and slabstock and other foams end-uses to determine the current status of specific applications and products within these end-uses and the progress being made to implement non-ozone-depleting alternatives. As non-ozone-depleting alternatives become more widely available and implemented, the Agency

[3] Based on EPA's information collection effort and public comments submitted in response to the NODA, EPA estimates that approximately 160 million pounds of HCFCs are used in the foam sector. HCFC–22 makes up only 5% of the total HCFC use in the foam sector on a weight basis. Approximately half of that is in the polyurethane appliance sector. The remaining HCFC–22 use is in polyurethane commercial refrigeration, sandwich panel and other polyurethane applications with some minor use of HCFC–22 in the polystyrene industry. Nearly 95% of the approximately 30 million pounds of HCFC–142b is used by the polystyrene industry. The remaining HCFC–142b use is scattered amongst polyurethane appliance, commercial refirgeration, one-component, and sandwich panel applications. Some HCFC–142b is also used to produce polyethylene foam.

plans to reevaluate the acceptability of HCFCs in these end-uses. In order to anticipate future EPA action restricting the use of HCFCs, EPA urges foam manufacturers to implement non-ozone-depleting alternatives as soon as they are available and economically feasible.

2. Small Business Impacts

At the time of the proposal, EPA did not believe that a significant number of small entities would be affected by the proposed action. However, EPA acknowledged that this decision would reverse a prior acceptability determination and current users could be disadvantaged if forced to quickly switch to other substitutes. For that reason, the Agency proposed to grandfather existing users of HCFC–22 and HCFC–142b until January 1, 2005. Through comments to the proposal, it came to the Agency's attention that we were not aware of some users of these HCFCs. Commenters argued that the flexibility EPA proposed to allow individual users to demonstrate need for continued use of HCFC–22 and HCFC–142b beyond 2005 was not appropriate because a case-by-case review to provide extensions to the grandfathering period would create a new SNAP process that would place an undue burden on many small businesses. In reaction to these comments, EPA expanded its effort to identify existing users of HCFC–22 and HCFC–142b that would be affected if EPA made final a decision to make HCFC–22 and HCFC–142b unacceptable for existing users. As discussed above, on May 23, 2001, EPA published a NODA that identified many of the existing HCFC–22/HCFC–142b users in the foam industry as small businesses (66 FR 28408). Because EPA is withdrawing the proposed action, there will be no effect on small businesses that are existing users of HCFC–22 and/or HCFC–142b. If the Agency takes future action to restrict the use of HCFCs based on its review of commercial refrigeration, and sandwich panels and slabstock and other foams end-uses, small business impacts will be fully considered prior to an EPA proposal.

3. Environmental Benefit

Commenters argued that the environmental benefit of the proposal had not been quantified and that an analysis would have shown minimal benefit. Specifically, these commenters claimed that a decision to list HCFC–22 and HCFC–142b as unacceptable would not significantly reduce damage to the ozone layer and that EPA had not shown how the proposal would reduce overall risks to human health and the environment. One commenter stated that ''any phaseout of HCFCs in the U.S. foam-blowing sector would have a de minimis impact on the recovery of the stratospheric ozone layer.''

Under the SNAP program, EPA does not rank various risk factors (*e.g.,* toxicity, flammability, ozone depletion potential) for each alternative being considered. Instead, EPA considers all relevant health and environmental information in a comparative framework. Today's decision is to list HCFC–22 and HCFC–142b as unacceptable substitutes for HCFC–141b in certain applications because of the availability of non-ozone depleting alternatives. Because of the risks they pose to the stratospheric ozone layer, HCFC–22 and HCFC–142b are being phased out of production under the provisions of the Montreal Protocol and the Clean Air Act. Under SNAP, EPA's mandate is to determine that it is ''unlawful'' to replace an ODS with a substitute where other alternatives are available and would reduce the overall risk to human health and the environment. EPA's decision to list HCFC–22 and HCFC–142b as unacceptable in specific end-uses is based on the conclusion that other non-ODS substitutes are available and, considering all risk factors, create less overall risk to human health and the environment.

Because of technical constraints faced by existing users of HCFC–22 and HCFC–142b, EPA is withdrawing the proposal affecting existing users. However, EPA maintains that use of these chemicals continues to destroy the ozone layer (estimates gathered by EPA and provided in the NODA show that 35 million pounds of HCFC–142b and HCFC–22 are used annually) and that there will be an environmental benefit to transitioning from ODSs as soon as technically viable, energy efficient alternatives are fully developed and available. EPA encourages companies to continue efforts to develop and implement these alternatives.

4. Accelerated Phaseout

Many commenters viewed EPA's proposed listing decision for HCFC–22 and HCFC–142b as an attempt to accelerate the phaseout of these HCFCs. Many commenters argued that prohibiting use of HCFCs under SNAP would amount to an acceleration of the established January 1, 2010 production phase-out of HCFC–22 and HCFC–142b established under section 605 of the Clean Air Act (CAA), and that such action is not authorized under the SNAP program (section 612).

EPA recognizes that some foam manufacturers viewed the 2010 production phaseout of HCFC–22 and HCFC–142b as equivalent to an end-of-use date because after that time supplies of these chemicals will significantly diminish. However, the 2010 deadline only relates to consumption of HCFCs as defined under section 601 of the CAA (consumption = production + import − exports). SNAP determinations under section 612 of the CAA do not affect consumption, defined under section 605 of the CAA. If finalized, EPA's determination would have only restricted *use* of HCFC–22 and HCFC–142b in the foam sector. Nevertheless, this issue is moot because under today's action, existing users of HCFC–22 and HCFC–142b can continue using these chemicals beyond January 1, 2005.

EPA also received comments that SNAP should not be used in order to reduce consumption of ozone depleting chemicals. Use restrictions under SNAP may have the effect of reducing the production and import of ozone-depleting substances. However, the SNAP program does not directly regulate or constrain HCFC consumption. Compliance with HCFC consumption requirements for the U.S., specified in the Montreal Protocol and Clean Air Act, are addressed in separate regulatory actions by the Agency. In the proposal, EPA was following its mandate to review ODS alternatives and make determinations on their acceptability in order to ensure that substitutes for ODSs that are determined acceptable present a lower risk to human health and the environment. EPA's basis for the proposal was that the Agency believed technically and economically viable non-ozone depleting alternatives were available. Because the goal of the SNAP program is to facilitate an expeditious movement to these alternatives, EPA believed its proposed action was appropriate at the time. However, as provided above, EPA is withdrawing its proposed decision because EPA now believes that technically feasible alternatives are not widely available for polystyrene manufacturers. Additional information will be collected on the viability and timing of non-ozone-depleting alternatives for polyurethane manufacturers currently using HCFC–22 and/or HCFC–142b.

*C. New Use of HCFC–22 and HCFC–142b*

A major objective of the SNAP program is to facilitate the transition from ozone-depleting chemicals by promoting the use of substitutes which present a lower risk to human health

and the environment (40 CFR 82.170(a)). Today's rule lists HCFC–22 and HCFC–142b as unacceptable replacements for HCFC–141b in rigid polyurethane and polyisocyanurate boardstock, and polyurethane appliance and spray foam applications. EPA has concluded based on the available information that technically viable, non-ozone depleting (zero-ODP) alternatives are currently or potentially available for HCFC–141b for these end-uses. The Agency believes that the use of HCFC–22 and HCFC–142b in applications where non-ozone depleting chemicals are available is unnecessary and presents greater risk to human health and the environment by contributing to the continued depletion of the ozone layer.

In the boardstock and appliance foam sectors, many companies have already switched to non-ozone-depleting alternatives or plan to do so in the near future. In the spray foam sector, alternatives other than HCFC–22 or HCFC–142b have been identified as eventual replacements for HCFC–141b. At this point, however, the spray foam industry believes that additional time is needed to test and implement any alternatives to HCFC–141b. The Agency is currently reviewing a request that limited quantities of HCFC–141b be made available for spray foam applications beyond the January 1, 2003 phaseout deadline. EPA intends to issue a proposed determination pertaining to this request later this year as part of the HCFC allocation rulemaking.

Today's rule lists HCFC–22 and HCFC–142b as acceptable replacements, under narrowed use limits, for HCFC–141b in commercial refrigeration, sandwich panels, and slabstock and other foams applications. Users intending to adopt HCFC–22 or HCFC–142b, and blends thererof in the commercial refrigeration and sandwich panels, and the ''slabstock and other foams'' end-uses, must ascertain and document that other acceptable alternatives are not technically feasible. EPA believes that at this time, technically viable, non-ozone depleting (zero-ODP) alternatives to HCFC–141b are not fully developed for all applications within these end-uses. With the production phaseout of HCFC–141b approaching, several comments indicated that many companies are aggressively testing non-ozone-depleting alternatives and plan to implement them in the near future. However, these end-uses are comprised of extremely diverse products and non-ozone-depleting alternatives may not be fully developed in every unique application within these end-uses. Additionally, these end-uses comprise thousands of small businesses and EPA believes that, in this situation, it is appropriate to allow the narrowed use of HCFC–22 and/or HCFC–142b where necessary. Although EPA encourages continued efforts to implement non-ozone-depleting alternatives, the Agency feels that allowing narrowed use of HCFC–22 and/or HCFC–142b will facilitate the impending HCFC–141b transition by providing flexibility to small businesses who have not yet successfully identified suitable alternatives.

Comments on the July 11, 2000 proposal and May 23, 2001 NODA regarding new use of HCFC–22 and HCFC–142b as replacements for HCFC–141b indicate opposing views on the following four major issues which are addressed in detail below:

1. Technical viability of alternatives to HCFC–141b
2. Availability of alternatives to HCFC–141b
3. Economic/small business impacts
4. EPA's review process

1. Technical Viability of Alternatives

EPA's proposal was based on our understanding that technically feasible alternatives are available in all foam sectors. However, some comments suggested that feasible alternatives were not available for all end-uses and that EPA should have proposed acceptability determinations by end-use rather than across the entire foam sector. EPA's SNAP program has defined ten major end-uses in the foam sector. Of these ten end-uses, manufacturers in the following four use HCFC–141b:[4]

- Rigid Polyurethane and Polyisocyanurate Laminated Boardstock
- Rigid Polyurethane Appliance
- Rigid Polyurethane Spray, Commercial Refrigeration, and Sandwich Panels
- Rigid Polyurethane Slabstock and Other Foams

Based on data collected by the Agency (Air Docket A–2000–18, IV–D–79), rigid polyurethane/polyisocyanurate laminated boardstock makes up 60% of the total foam manufacturing use of HCFC–141b in the U.S., the rigid polyurethane appliance end-use and spray foam application each use approximately 18% of the total HCFC–141b, and the remaining 4–5% of HCFC–141b use is combined in rigid polyurethane commercial refrigeration, sandwich panels, slabstock and other foam applications. Below is a discussion, by end-use, on the technical feasibility of non-ODS alternatives to HCFC–141b (Table B lists the SNAP approved alternatives).

TABLE B.—SNAP APPROVED ALTERNATIVES TO HCFCS

| SNAP approved HCFC alternative | Boardstock | Appliance | Spray | Commercial refrigeration, and sandwich panels | Slabstock and other foams |
|---|---|---|---|---|---|
| Water/$CO_2$ | X | X | X | X | X |
| HFC–134a | X | X | X | X | X |
| HFC–152a | X | X | X | X | X |
| HFC–245fa | X | X | X | X | X |
| Exxsol | X | X | X | X | X |
| Hydrocarbons (C3–C6) | X | X | ..... | X | X |
| Formic Acid | X | X | X | X | X |
| Vacuum Panels | ..... | X | | | |
| 2-chloropropane | X | | | | |
| Methyl Formate | X | X | ..... | X | X |

[4] HCFC–141B is not used to manufacture polystyrene foam.

Rigid Polyurethane and Polyisocyanurate Laminated Boardstock

Although the majority of comments supported EPA's determination that technically viable alternatives to HCFC–141b are available for the polyurethane and polyisocyanurate boardstock industry, two commenters stated that those manufacturers converting from HCFC–141b to hydrocarbons would see a 10–15% loss in insulation value of their product. EPA recognizes that foam manufactured using alternative blowing agents may display slightly different properties than HCFC–141b-blown foam. However, the Agency did not receive, and is not otherwise aware of, data demonstrating that the use of hydrocarbons would reduce the insulating performance of polyurethane and polyisocyanurate boardstock. On the contrary, EPA received information showing that hydrocarbons are a viable option and that manufacturers in the polyurethane and polyisocyanurate laminated boardstock industry are actively transitioning to them, as described below.

Hydrocarbon blowing agents have been considered viable candidates to replace HCFCs for several years. A 1995 article indicates that ''hydrocarbon blown foams can be developed that meet the stringent requirements of the North American construction industries'' (Docket A–2000–18, IV–D–41, Supporting Document #54). Although processing techniques were not optimized at the time, according to the authors, the data ''clearly indicate[s] that n-pentane and cyclopentane are viable candidates for use as * * * blowing agents in polyisocyanurate foams.'' Subsequent studies show that, due to further research and development of hydrocarbon blown foams over the past 5 years, the technical viability of hydrocarbons has improved (A–2000–18, IV–D–41, Supporting Document #44–51).

Additionally, several comments provided information confirming that rigid polyurethane and polyisocyanurate laminated boardstock manufacturers are rapidly converting to hydrocarbon-based blowing agents. One roofing corporation presented a line of hydrocarbon blown foam in 1997, well ahead of the 2003 HCFC–141b phaseout (A–2000–18, IV–D–72). As of March 2000, two additional polyisocyanurate boardstock manufacturers had announced their intention to use hydrocarbons, and two or three others planned to do so before 2001 (Docket A–2000–18, IV–D–41, Supporting Document #43). EPA has additional information indicating that several other boardstock manufacturers are in the process of converting some or all of their facilities from HCFC–141b to hydrocarbons (A–2000–18, IV–D–64, 73). EPA believes that evidence of an ongoing transition from HCFC–141b to hydrocarbon blowing agents, provides conclusive support for the Agency's position that low- or zero-ODP alternatives are available in the rigid polyurethane and polyisocyanurate boardstock sector.

Although hydrocarbons have taken the lead as the replacement for HCFC–141b in rigid polyurethane and polyisocyanurate laminated boardstock applications, hydrofluorocarbons (HFCs) may also be considered viable alternatives to HCFC blowing agents (Docket A–2000–18, IV–D–41, Supporting Document #48, 52, 54). An article published for a Polyurethanes World Congress meeting in 1997 indicates that HFC–245fa is a technically viable zero-ODP alternative that ''produces foams with properties comparable to HCFC–141b with minimal reformulation'' (Docket A–2000–18, IV–D–41, Supporting Document #52). Although the author states that the predicted costs of HFC–245fa could limit its use in certain applications, recently published articles show that more cost-effective blends of HFC–245fa and water or HFC–245fa and hydrocarbons are currently being tested and developed for the boardstock sector (Docket A–2000–18, IV–D–74, 75). Based on this information, the Agency believes HFC–245fa and HFC–245fa blends are additional, viable zero-ODP alternatives to HCFC–141b in the polyurethane and polyisocyanurate boardstock industry.

Rigid Polyurethane Appliance Foam

The rigid polyurethane appliance foam industry predominantly uses HCFC–141b with some minor use of HCFC–22 and HCFC–142b. As discussed in the previous section, existing use of HCFC–22 and HCFC–142b is considered acceptable in today's action.[5] For appliance foam manufacturers using HCFC–141b today, however, the Agency believes that there are a sufficient number of viable, non-ozone depleting alternatives to which the industry has already made substantial commitment. As discussed below, in anticipation of the phaseout of HCFC–141b and new Department of Energy efficiency standards, the U.S. appliance industry has been testing and developing zero-ODP alternatives for at least five years (Docket A–2000–18: IV–D–11, Attachments #2, 4; IV–D–41, Supporting Document #5).

Hydrocarbon blowing agents have been considered viable candidates to replace CFCs and HCFCs for several years and are widely used to produce appliance foam in Europe and Japan. One commenter provided 16 articles showing performance developments of hydrocarbon appliance systems since 1995 (Docket A–2000–18, IV–D–41, Supporting Documents #2–5, 8–9, 12–13, 15, 17, 21–23, 25–26, 29). Although U.S. appliance manufacturers have not shown broad movement towards hydrocarbons, comments indicate that hydrocarbons are technically viable alternatives to HCFC–141b (Docket A–2000–18, IV–D–31 and 41 -Supporting Document #5, 43).

HFC–134a also is a technically viable alternative that is currently being used in the U.S. to manufacture appliance foam (Docket A–2000–18, IV–D–41-Supporting Document #5, IV–E–6). An October 2000 industry report (Docket A–2000–18, IV–D–75c) documents developments in HFC–134a technology that have improved processing and foam properties. The author concludes that HFC–134a is a ''cost-effective substitute to produce rigid polyurethane foam with excellent properties for the appliance industry.''

EPA received some comments opposed to the Agency's determination that technically viable alternatives are available for the polyurethane appliance foam sector. Three commenters stated that appliance manufacturers converting from HCFC–141b to commercially available zero-ODP alternatives would see a 10% loss in energy efficiency (Docket A–2000–18, IV–D–3, 11, 16). These commenters also suggest that alternative blowing agents, such as HFC–134a and cyclopentane, may result in foams that are not as thermally insulating as those produced with HCFC–141b. However, one study reported that performance of cyclopentane-blown appliance foam may approach that of CFC–11 (Docket A–2000–18, IV–D–41, Supporting Document #8). If appliance manufacturers see losses in insulation values when using hydrocarbons or HFC–134a, modifications can be made to reduce energy consumption to

[5] Appliance manufacturers recently modified their products and operations to comply with 2001 DOE energy efficiency standards. In contrast to appliance manufacturers that have been using HCFC–141b, HCFC–22/–142b users have assumed that their blowing agents would be available until 2010. As discussed in this section, alternatives to HCFC–141b in the appliance sector have been developed and are being implemented in ways to ensure compliance with the DOE standard. The Agency believes that it would be difficult at this point for HCFC–22/–142b users to test and implement other blowing agents in their products to meet the new energy standards.

compensate for losses in insulation value (Docket A–2000–18: IV–D–11, Attachment #1; IV–D–41, Supporting Document #27, 32, 33). Additionally, EPA received numerous studies showing that use of HFC–245fa, which is scheduled to be commercially available by mid-2002, could result in energy efficiencies equal or superior to those for HCFC–141b (Docket A–2000–18: IV–D–11, Attachment #1–5, IV–D–41, Supporting Documents #1, 2, 5–7, 10, 11, 14–17, 23, 28) and several appliance manufacturers have finalized their plans to convert to HFC–245fa blowing agents (Docket A–2000–18: IV–E–6, IV–D–23).

Water heaters and vending machines also fall under the SNAP rigid polyurethane appliance sector. Both of these applications are primarily supplied by polyurethane systems houses and some manufacturers in this end-use currently use HCFC–22 and HCFC–142b, while others use HCFC–141b.[6] The technical viability of alternatives for these applications was discussed in the May 23, 2001 Notice of Data Availability (NODA). Available information indicates that non-ozone depleting alternatives to HCFC–141b are available and are already being implemented. Several water heater manufacturers have transitioned from HCFCs to non-ozone-depleting alternatives or are planning for conversions as the HCFC–141b production phaseout nears. No technical barriers to these alternatives were identified in the comments received from the polyurethane systems houses (non-spray foam) provided in the NODA.

Rigid Polyurethane Spray Foam

Based on several comments and a report commissioned by the Agency to supplement information provided in the comments to the proposed rule and NODA, there is little if any interest within the spray polyurethane foam industry in switching from HCFC–141b to HCFC–22 and/or HCFC–142b. Much of this resistance is due to differences in processing and performance, and the capital costs associated with transitioning from a liquid blowing agent (HCFC–141b) to a gaseous blowing agent (HCFC–22/HCFC–142b). Today's action lists HCFC–22 or HCFC–142b as unacceptable substitutes for HCFC–141b within the rigid polyurethane spray foam sector. As discussed previously, the Agency will issue a separate decision on the request to allow for limited production of HCFC–141b beyond January, 2003 for spray foam applications.

Commercial Refrigeration and Sandwich Panels; Slabstock and ''Other Foams''

Based on comments from numerous foam manufacturers within the commercial refrigeration, sandwich panels, and slabstock & ''other foams'' applications, EPA is approving use of HCFC–22 and HCFC–142b in these end-uses with narrowed use conditions. EPA found that these end-uses have the following characteristics: (1) Highly diverse applications with unique technical considerations depending on the application; (2) thousands of small businesses with varying levels of progress made on research and development on alternatives; and (3) use of different HCFCs within the same applications with no single preferred blowing agent of choice;. These end-uses include a broad array of products and applications such as walk-in coolers, garage and entry doors, refrigerated trucks and railcars, architectural panels, picnic coolers, tank and pipe insulation, marine flotation foams, floral foams, and taxidermy foams. Given the limited amount of published information on the technical viability of alternatives in these end-uses, EPA commissioned a review of the diverse foam applications encompassed under this sector. The resulting information was made available for public review in the May 23, 2001 NODA (66 FR 28408) and can be found in EPA's Air Docket (A–2000–18, IV–D–78, and 79).

Through the NODA, EPA provided information on the type and amount of HCFC used in each foam industry end-use (Air Docket A–2000–18, IV–D–79). Based on information collected by EPA and comments to the NODA, EPA believes there is mixed use of HCFC–141b, –22, and HCFC–142b in the commercial refrigeration and sandwich panels and the slabstock and other foams applications, depending on the specific product and the individual manufacturer (Air Docket A–2000–18, IV–D–81). Unlike the polyurethane boardstock, appliance, and spray foam end-uses, a majority of foam manufacturers in these end-uses did not adopt HCFC–141b as their prime blowing agent. Instead, individual foam manufacturers within these applications adopted different HCFC blowing agents based on the original blowing agent used and existing equipment and product requirements (although there were differences in handling and processing due to differences in vapor pressure, the blowing agent and capital costs to transition were similar). Because HCFC–141b, -22, and HCFC–142b were similar in cost, companies could meet their specific product requirements and remain cost competitive while using different blowing agents to manufacture similar products.

Within the commercial refrigeration and sandwich panel applications, non-ozone depleting alternatives have been identified and, in limited cases, implemented successfully. EPA is allowing limited use of HCFC–22 and/or HCFC–142b as alternatives to HCFC–141b for companies within these applications who have not had access to and/or have been able to fully implement ozone-friendly alternatives to meet their thermal performance, dimensional, and flammability control requirements. The narrowed use limits imposed under today's action are in recognition of comments and information collected by the Agency indicating that many companies in the pour foam industry are engaged in developing and testing alternatives to ozone depleting chemicals, but that ozone-friendly alternatives are not yet widely available to ensure that products are made that maintain sufficient thermal efficiency, product integrity and safety. While technical information is scarce for these applications, EPA believes that within the wide range of small foam uses within these applications, there are HCFC–141b users who currently have technical constraints in transitioning from HCFC–141b to non-ozone-depleting alternatives. To help ensure that HCFC–22 and HCFC–142b are used as substitutes for HCFC–141b only in specific applications where no technically viable alternatives are available, however, EPA is including these narrowed use limit provisions.

In commercial refrigeration and sandwich panel applications, EPA's consultant report and comments identified HCFC–22 and HCFC–142b as potential alternatives to HCFC–141b. One example is in refrigerated transport insulation, which may include refrigerated truck bodies and insulated rail cars, where there are cases in which it is critical to maintain thermal performance, flammability control, and an absolute outside dimension of a container while maximizing internal dimensions. Further, due to new low temperature requirements for food storage and transport recently imposed by the Food and Drug Administration, there is an increased demand for thermal performance of blowing agents for these applications. Even though manufacturers switching from a liquid

[6] Polyurethane systems houses sell pre-blended polyurethane systems which are defined in Section III, A.

(HCFC–141b) to a gaseous (HCFC–22/HCFC–142b) blowing agent will need to make process/equipment modifications, some companies consider HCFC–22 and HCFC–142b viable alternatives to HCFC–141b because their manufacturing processes occur in a controlled factory setting, making this transition more manageable. Therefore, where low temperature and/or space requirements cannot be met with non-ozone-depleting blowing agents, HCFC–22 and HCFC–142b can be used as replacements for HCFC–141b.

Comments to the consultant report and information from systems houses indicate that there are also pour foam applications within the slabstock and other foams end-use where manufacturers have identified difficulties in transitioning from HCFC–141b to non-ODS alternatives. EPA received comments that HCFC–22/HCFC–142b may also be used as transitional blowing agents within this end-use. Similar to the commercial refrigeration and sandwich panel end-uses, available data indicate that alternatives to HCFCs are available for some applications within the rigid polyurethane slabstock and other foam end use, particularly those where foam is used in non-insulating applications. However, due to the diverse nature of this end use (*e.g.,* picnic coolers, drink dispensers, marine flotation, tanks and pipes, floral and taxidermy foam) and potential technical constraints of some small businesses in transitioning to ozone-friendly alternatives, EPA is approving the use of HCFC–22 and HCFC–142b as alternatives to HCFC–141b with narrowed use limits. At this time, EPA believes it is appropriate to approve these blowing agents in narrowed uses to facilitate the HCFC–141b phaseout and level the playing field for small businesses.

The Agency recognizes that some of the constraints within the commercial refrigeration and sandwich panel and slabstock and other foam end-use sectors can be resolved through equipment and formulation modifications and that non-ozone-depleting blowing agents are currently under consideration or are being used in some applications. However, the end-uses within these sectors are highly diverse and their use of HCFCs fragmented (some use HCFC–141b while others use HCFC–22 and HCFC–142b), and it is difficult to assess, in the absence of detailed information, the viability of alternatives in each narrow application. While HCFC–22/HCFC–142b may be the most viable alternatives to HCFC–141b for some applications, non-ozone-depleting alternatives may be technically viable in other applications, such as entry or garage doors, where there are no strict insulation requirements. In fact, several door manufacturers have converted or are in the process of converting to non-ODS alternatives already listed as acceptable (Docket A–2000–18, IV–D–64, IV–E–6). In other cases, where HCFC–141b is used in niche applications, EPA believes foam manufacturers may experience difficulties and delays in transitioning from HCFC–141b to non-ozone-depleting alternatives. Given the constraints associated with cost and timing of transitioning to alternatives for small businesses, and the need to facilitate a smooth and equitable transition from HCFC–141b, EPA believes that within the commercial refrigeration and sandwich panel and the slabstock and other foam end-use sectors, it is appropriate to approve use of HCFC–22 and/or HCFC–142b as substitutes for HCFC–141b in these end-uses, provided that the users intending to adopt HCFC–22 or HCFC–142b ascertain and document that other acceptable alternatives are not technically feasible. EPA urges foam manufacturers to replace HCFC–141b with non-ODP alternatives in applications where the non-ODP alternatives are technically and economically feasible. The Agency will continue its review of the transition in these end-uses for possible regulatory action in the future.

2. Availability of Alternatives

Many commenters expressed concern over the timing and continued availability of the alternatives to HCFC–141b. The majority of these comments related to the limited supply of HFC–245fa to date and the uncertainty associated with relying on a single source of supply. EPA recognizes that HFC–245fa is not currently produced in commercial quantities. However, information from the manufacturer indicates that pilot quantities of HFC–245fa have been supplied to the foam industry, with semi-commercial quantities available today, and world-scale quantities becoming available later in 2002. Because the major market for this chemical is as a replacement for HCFC–141b, it is not surprising that the timing of commercialization coincides with the phaseout of 141b by January 1, 2003. Based on the progress on plant construction, EPA is confident that HFC–245fa will be commercially available to a significant part of the foam industry later this year.

It is important to note that other alternatives, including other HFCs, hydrocarbons, and $CO_2$/water have been commercially available for years. Although two commenters expressed concern that chemical manufacturers may not commit to produce sufficient quantities of HFC–134a, EPA has no reason to believe that HFC–134a will not be available for the foams industry. HFC–134a is extensively used throughout the U.S. in foam applications and as a refrigerant in automobile air conditioners. Hydrocarbons, $CO_2$/water, and other SNAP approved alternatives are also widely available.

3. Economic/Small Business Impacts

Today's action designates HCFC–22 and HCFC–142b as acceptable substitutes subject to narrowed use limits for new users in some sectors (commercial refrigeration, sandwich panels, slabstock and other foam applications), and unacceptable for new use in other sectors where ozone-friendly alternatives are available. The Agency believes that its original cost analysis adequately accounts for the projected costs associated with the final rule. In evaluating the potential cost impacts of the July 11, 2000 proposal, EPA focused on the appliance sector where a range of alternative blowing agents, including HCFC–22 and HCFC–142b were considered technically viable replacements for HCFC–141b; responses to comments on this evaluation are provided later in this section. For other foam end-uses, EPA believed that either: (a) There would be no cost associated with the proposed decision; or, (b) that the costs would be extremely low. Explanations for each scenario follows:

(a) The Agency did not project additional costs for certain polyurethane foam end-uses because the Agency believed that those end-uses had identified non-ozone depleting chemicals as the most viable options. Because HCFC–22 and HCFC–142b were not seen as technically viable and/or cost effective, restrictions on new use of HCFC–22 and HCFC–142b in those sectors would not impose additional costs to the industry. Based on comments, EPA believes that assessment was accurate for the boardstock and spray foam end-uses. For other polyurethane applications, however, EPA found that HCFC–22 and HCFC–142b are considered technically and economically viable alternatives to HCFC–141b. In those applications, EPA is listing HCFC–22 and HCFC–142b as acceptable subject to narrowed use limits. The Agency does not believe there will be costs to the industry related to this decision that have not already been accounted for as part of the

original CFC and HCFC phaseout regulations.

Since 1993, the foam industry, including the relevant sectors: commercial refrigeration, sandwich panels, and slabstock, have been aware of the impending phaseout of HCFCs. Individual companies in these sectors commented that they have been engaged in evaluating alternatives to HCFC–141b and collecting the kind of information required by the narrowed use provisions in today's rule. Under this rulemaking, these companies will only have to retain the documentation of these evaluations. The Agency has already accounted for costs associated with recordkeeping requirements for substitutes acceptable subject to narrowed use limits under the SNAP program (2001 SNAP ICR, OMB No. 2060–0226). The Agency therefore does not project any added costs for these sectors associated with today's rule.

(b) The bulk of comments on the economic impacts to industry, including small business impacts, came from existing users of HCFC–22 and HCFC–142b who were concerned that EPA had not fully considered the impact of discontinuing use of these chemicals by 2005. Any potential impacts on such users are not an issue given today's action which withdraws EPA's proposed decision to list HCFC–22 and HCFC–142b as unacceptable for existing users of those chemicals. EPA concluded in its original economic analysis that the cost of transitioning away from HCFC–22 and HCFC–142b by January 1, 2005 would be extremely low because alternatives were readily available and comparably priced. As stated above, this issue is no longer relevant given that EPA is withdrawing the proposed restriction on continued use of HCFC–22 and HCFC–142b for those end-uses.

As noted above, for those applications where new use of HCFC–22 and HCFC–142b is not considered acceptable, rigid polyurethane appliance foam is the only sector where HCFC–22 and HCFC–142b has been considered a possible option by at least some companies. As part of the July 11, 2000 proposal, EPA estimated potential costs associated with restricting use of HCFC–22, HCFC–142b, and HCFC–124, in the appliance end-use. The Agency's assessment of costs to the appliance sector was premised on the fact that the costs of transitioning out of HCFC–141b for all users had been previously accounted for in the original CFC and HCFC phaseout regulations. Furthermore, EPA examined the potential costs associated with meeting the proposed SNAP restrictions while complying with the DOE efficiency standards which took effect in July, 2001. Thus, for purposes of this rule, EPA compared the costs of manufacturing new refrigerators with foam blowing agents other than HCFC–141b (*i.e.,* the cost of using HCFC–22/–142b was compared with the costs of using HFC–134a, HFC–245fa or hydrocarbons).

Two commenters claim that the Unfunded Mandates Act obligated EPA to consider a reasonable number of regulatory alternatives and develop a budgetary impact statement because the proposed rule would result in costs to the private sector of more than $100 million or more in any one year. One of these commenters suggests that ''full utilization'' of HFC–245fa (*i.e.,* use in all new refrigerators) would result in a material cost impact of $86 million per year and that full utilization of HFC–134a would result in an annual cost of $114.5 million. The commenters note that these costs do not take into account the retail pricing structure nor capital expenditures.

Although it is unclear precisely what assumptions went into the commenters' conclusions regarding cost, it appears that the cost figures provided assume the full cost of transferring from HFC–141b to a substitute. EPA disagrees with that method of determining the costs associated with this rule. The core costs of switching from HCFC–141b to another substitute are costs associated with the HCFC phase-out rule, which mandates a phaseout in production of HCFC–141b by January 1, 2003. In the economic analysis performed for the phaseout rule, EPA took into account the general cost that users of HCFCs would incur in switching to substitutes. Thus, in this rulemaking, which restricts some of the potential substitutes, EPA took into consideration the differential costs associated with employing the substitutes. For example, in examining the cost of this rule, EPA compared the costs to a user of switching from HCFC–141b to HCFC–22/142b with the costs of switching from HCFC–141b to HFC–245fa. Thus, if it were more costly to switch to HFC–245fa than to switch to HCFC–22/142b, the cost attributable to this rule which lists HCFC–22/142b as an unacceptable substitute in appliance foam would be the incremental cost of switching to HFC–245fa. In addition, EPA notes that the figures provided by the commenter for HFC–245fa and HFC–134a both assume ''full utilization.'' Thus, those numbers should not be combined; rather, it should be assumed that the costs identified by the commenter would fall somewhere between $86 million and $114.5 million, assuming the validity of those numbers. (As noted above, the commenter does not explain how those numbers were derived.) In concluding that the $100 million threshold would be exceeded because of this rule, the commenter apparently assumes a distribution of refrigerators using both HFCs (134a and 245fa) but does not explain the scenario that they project for the industry.

The Agency also disagrees with the commenter's claim that EPA's economic analysis under-estimates the manufacturing costs for refrigerators that would be converting to zero-ODP blowing agents for their insulation foam. As noted above, the Agency did not attribute costs specific to transitioning out of HCFC–141b to this rulemaking, since those costs have already been accounted for as part of the CFC and HCFC phaseout regulations. The Agency did estimate additional manufacturing costs associated with alternative blowing agents and it is noteworthy that this commenter presents a range of added costs comparable to the range derived by EPA. The commenter estimates that zero-ODP blowing agents would cost between $4.07 and $8.60 per refrigerator, while EPA estimated that the cost to convert to zero-ODP blowing agents would range from approximately $3 to $10 for a mid-size refrigerator. It is difficult for the Agency to respond to the commenter's analysis in any detail, however, because the commenter only states in a footnote to the table entitled ''Foam Blowing Agent Performance/Cost Factors'' that the costs include ''all costs necessary to insure that the foam system will function satisfactorily: blowing agent, polyurethane components, and capital investment,'' but does not disaggregate costs for separate manufacturing components as EPA did in its analysis (blowing agent price, foam density, foam cost, foam liner cost, capital to convert).

By apparently ignoring the differential costs considered by EPA, the commenter under-estimates costs associated with less energy efficient blowing agents (*e.g.,* HCFC–22/–142b) and over-estimates costs associated with more efficient blowing agents (*e.g.,* HFC–245fa). In reviewing the insulation efficiencies associated with various acceptable foam blowing agents, EPA believed it was necessary to reflect the total costs of refrigerator manufacture under the new DOE requirements associated with alternative blowing agents. EPA's analysis calculated the potential *additional* costs associated with these kinds of design modifications needed to compensate for foams blown with agents that provide less insulation value. These additional costs depend on

the insulation value of the different blowing agents. EPA derived ''energy penalties'' or ''energy gaps'' for the various foam blowing agents relative to HCFC–141b based on the R-values and k-factors for foams made with the various alternative blowing agents and other data provided in various industry forums. For example, these data indicate an 8% energy gap for a 60%/40% blend of HCFC–22/142b, whereas the commenter presents a significantly lower energy penalty (2%) for an unspecified blend of HCFC–22 and HCFC–142b. Unlike EPA's analysis, the commenter's analysis does not appear to account for differential costs between alternative blowing agents associated with potential refrigerator re-designs to meet DOE energy efficiency standards that took effect in July 2001.

The commenter incorrectly concludes that ''EPA implies that lower power, more efficient evaporator and condenser fan motors, more foam, and more extensive gasket systems cost less rather than more.'' The Agency does not believe that these types of modifications would not entail costs, and recognizes that complying with the new DOE energy standard, and transitioning from HCFC–141b to alternative blowing agents will have costs. However, as noted above, these costs are attributable to the phaseout and DOE energy efficiency standards. Blowing agents that provide greater insulation value will reduce the burden on the manufacturer to increase energy efficiency in other components of the refrigerator. In comparing the costs associated with the different alternatives, the Agency estimated that the impacts of the proposal, because it would facilitate a transition to an energy efficient blowing agent, would actually be a cost *savings* for the industry and ultimately, consumers. Because HFC–245fa has a high insulation value, EPA calculated that the total costs (cost of foam plus re-design costs to comply with new energy efficiency standard) associated with a transition to this agent would be considerably lower compared to a transition using any other alternative. In other words, a switch from HCFC–141b to HFC–245fa (which have comparable insulation values) would cost between $2.30 and $3.40 per refrigerator less compared to a switch from HCFC–141b to other blowing agents with lower insulation values and boiling points, such as HCFC–142b/HCFC–22 blends, or HFC–134a. When these costs are aggregated for the U.S., the cost reductions would total between approximately $23 million and $34 million per year.

The Agency believes, as discussed above, that the total costs of transitioning out of HCFC–141b in manufacturing new refrigerators is not a relevant consideration for today's rulemaking. The commenter again is apparently not accounting for differences in insulation value across the different blowing agents that are potential alternatives to HCFC–141b. For example, the commenter on one hand states that indirect costs are included to compensate for the reduced insulation value provided by HFC–134a; however, indirect cost savings from using HFC–245fa, which provides significantly greater insulation value, are not included in the commenter's analysis. One commenter raised a concern that EPA does not restrict the import of products containing substitutes that EPA has determined unacceptable under SNAP and that companies that shift production of appliances to Mexico will have an unfair economic advantage. While EPA sympathizes with and shares the concerns raised by the commenter, the issues surrounding imports are complex and there are limits on EPA's ability to control the import of appliances that contain substitutes listed as unacceptable for use in the United States. However, those limits on EPA's ability to control imports do not justify a decision to list as acceptable substitutes that are more harmful to human health and the environment than other available substitutes.

The Agency concludes that comments received since the proposal do not provide any substantive reasons why the original estimates require revision. The Agency maintains its assertion that the costs associated with today's decision will not result in the expenditure by State, local, and tribal governments or the private sector of $100 million or more in any one year.

4. EPA's Review Process

EPA received comments that the Agency's review process took much longer than the period provided by the CAA and EPA's regulations and that the lengthy review created industry hardship. EPA recognizes that while a manufacturer of a substitute may market that substitute 90 days after it files a petition with EPA, that there may be reluctance of users to switch to that substitute until EPA makes a determination of whether that substitute is acceptable. EPA makes its best effort to review and act on a petition as quickly as possible. Under the SNAP procedures established in 1994, EPA may make determinations that a substitute is acceptable without going through notice-and-comment rulemaking. Thus, often, EPA can make determinations that a substitute is acceptable relatively quickly. However, EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes or to establish use limits. In providing adequate technical and scientific review of the substitute and providing sufficient public participation through the notice-and-comment rulemaking process, it is virtually impossible for the Agency to make such determinations quickly.

In this case, the Agency listed one of the chemicals in the petition, HFC–134a, as an acceptable substitute as soon as possible after the petition was received (64 FR 30410, June 8, 1999). HFC–134a is a non-ozone-depleting chemical that is safe to use and widely available. At that time, EPA reached the conclusion that additional review was necessary for the remaining chemicals (HCFCs) in the petition. Because of their ozone-depletion potential, EPA believed that the HCFCs could pose a higher risk than other SNAP approved alternatives. Therefore, EPA took additional time to assess the availability and technical viability of other SNAP approved alternatives in each foam sector end-use. Based on that review, EPA concluded that there were alternatives that posed a lower risk than HCFCs and drafted a proposal to list these chemicals as unacceptable. Following the comment period to the proposal, the Agency was faced with reviewing a significant amount of technical information provided in comments, collecting additional information regarding small businesses that might be affected by the rule, and seeking public comment on this new information through a Notice of Data Availability published in the **Federal Register**.

While EPA strives to act on these petitions in a quick, yet thoughtful, manner, if a person is concerned that EPA is failing to act in accordance with statutory or regulatory time frames the CAA provides a remedy. Under section 304 of the CAA, a person may file an action requesting a federal district court to order EPA to take action as required under the Act.

Several commenters argued that EPA did not consider the factors identified by EPA in the original SNAP program regulations as key decision criteria in evaluating the acceptability of proposed alternatives to ODSs (40 CFR 82.180 (a)(7)). Some commenters believed that EPA based the proposal on ODP alone and argued that the Agency cannot make a listing decision without taking into account the overall risk of the

alternatives. EPA would like to assure commenters that these factors were indeed considered. EPA's SNAP submission form requests extensive information on each substitute.[7] Before proposing action on July 11, 2000, the Agency considered ODP, global warming potential (GWP), insulation values for the resulting foam products, and toxicological risks for HCFC–22, –142b, and –124 compared to HCFC–141b and other acceptable alternatives. (EPA discusses its final decision to list HCFC–124 as unacceptable more fully in the next section.) Although in the preamble of the July 11, 2000 proposal, EPA summarized only the atmospheric effects of the various HCFCs, the information regarding the other decision criteria was considered and is publicly available in EPA's Air Docket A–91–42. After considering health and environment risk criteria, EPA determined that ODP and atmospheric lifetimes of HCFC–22, –142b, and –124 distinguish these chemicals from other HCFC–141b alternatives. As stated in the proposal, HCFC–141b has an ODP of 0.1, HCFC–142b has an ODP of 0.065, HCFC–22 has an ODP of 0.055, and HCFC–124 has an ODP of 0.02 (World Meteorological Organization, 1999). The atmospheric lifetimes for these chemicals range from 6–18 years. Although it was not the determining factor for this decision, EPA noted that HCFC–22 and HCFC–142b also have 100-year global warming potentials that are significantly higher (1900 and 2300 respectively) than the zero-ODP alternatives already listed as acceptable. The Agency believes that the ozone depletion potentials of HCFC–22, –124, and –142b make them unacceptable substitutes for HCFC–141b in appliance, boardstock and spray foam applications because other alternatives are available that overall pose less risk to human health and the environment.

One commenter suggested that EPA should list HCFC–22, –142b, and –124 as acceptable substitutes for HCFC–141b in all foam end-uses because each of the submitted chemicals has a lower ODP than does HCFC–141b. The same commenter suggested EPA's proposed decision not to list as acceptable substitutes with any ODP was inconsistent with prior EPA decisions because 2-chloropropane, with an ODP of 0.003, was recently listed as acceptable under SNAP in the polyurethane boardstock sector. Similarly, another commenter referenced approval of a blend with $CF_3I$ (ODP estimated to be 0.008, atmospheric lifetime approximately 1 day) to replace CFC–12 in some refrigeration applications. EPA acknowledges that the Agency has listed substitutes for ODSs that themselves have ODPs; indeed, EPA approved the use of HCFCs as transitional foam blowing agents, despite their ozone depletion potential, because technically feasible alternatives to CFCs were limited at that time. EPA is taking the same approach in today's final action. In commercial refrigeration, sandwich panels, and slabstock and other foams applications, the Agency is approving narrowed use of HCFC–22 and HCFC–142b as replacements for HCFC–141b because other approved alternatives may not be viable in certain applications at this time. However, in polyurethane boardstock, appliance and spray foam applications, EPA believes that low- or non-ozone-depleting alternatives have been identified; therefore, EPA is listing HCFCs as unacceptable as replacements for HCFC–141b in these end-uses. EPA does not believe that today's decision to list HCFC–22 and HCFC–142b as unacceptable replacements for HCFC–141b in those end uses is inconsistent with EPA's approval of 2-chloropropane as a replacement for HCFC–141b because the ODP of 2-chloropropane is estimated to be 0.003 which is extremely low (significantly lower than the ODPs of HCFC–22 and HCFC–142b).

Even though HCFC–22, and 142b have lower ODPs than HCFC–141b, EPA does not believe that new use of these ODSs as substitutes for HCFC–141b, even for a short period of time, is warranted across the spectrum of foam applications given the availability of zero-ODP foam blowing agents in certain applications. Where alternatives are available, the transition from HCFCs to zero-ODP alternatives can be made, and will be made more quickly without an additional and incremental transition from HCFC–141b to other HCFCs. This decision is consistent with a previous EPA determination, based on the availability of alternatives with zero-ODP, that HCFC–141b is *not* acceptable as a substitute cleaning solvent for CFC–113 or methyl chloroform (59 FR 13044). A determination that it is acceptable for users of HCFC–141b to switch to HCFC–22, HCFC–142b or blends thereof would result in continued damage to the ozone layer and would delay the transition to zero-ODP foam blowing agents which are available.

One commenter suggested that EPA's review should have resulted in approval of HCFCs because, based on data provided by the commenter, some of the currently acceptable alternatives increase GWP, $CO_2$ loading, and energy use compared to HCFC–141b (Docket A–2000–18, IV–D–3) and that HCFC–22, –142b, and –124 provide lower overall risk than HCFC–141b. Under SNAP, EPA's primary consideration is the comparison of substitutes, not the comparison of the substitute with the substance it is replacing (Clean Air Act Section 612 (c)). The information that EPA had at the time of proposal, as well as the information provided by the commenter, shows that the zero-ODP alternatives already listed as acceptable, compared to HCFC–22 and HCFC–142b, can in fact reduce ODP, GWP, atmospheric lifetime, and improve energy efficiency, thereby reducing emissions of $CO_2$. The information also shows that the zero-ODP alternatives, compared to HCFC–124 reduce ODP in all cases, and reduce GWP, atmospheric lifetime, and $CO_2$ loading in some cases. However, the differences in GWP, atmospheric lifetime, and $CO_2$ loading were not significant enough to warrant determining HCFC–124 acceptable. Although information provided by this commenter and a few others report increases in energy use for some currently acceptable substitutes, EPA believes, as discussed above in section III, C, 1 under *Rigid Polyurethane Appliance Foam,* that use of zero-ODP alternatives will result in insulation values very close to those for HCFC–141b and that other non-foam related modifications could improve energy efficiency where necessary.

Regarding the other health and environmental factors typically included in SNAP review (40 CFC 82.180(a)(7)), EPA found no substantive distinction between the HCFCs under consideration and the alternatives already listed as acceptable foam blowing agents. However, some commenters disagreed with EPA's finding and expressed concern that EPA disregarded evidence that HCFC–22 and HCFC–142b pose lower risks than current alternatives in certain aspects. Two commenters specifically pointed out that hydrocarbons are flammable volatile organic compounds and pose a greater risk than the HCFCs under review. One of these commenters also stated that HCFC–22 and HCFC–142b are relatively less toxic than HFC–245fa.

EPA recognizes that the risks associated with factors such as toxicity and flammability vary amongst the

[7] To minimize the reporting burden EPA does not require submitters to re-submit data that have been previously reviewed by the Agency. HCFC–22 and HCFC–142b and HCFC–124 were previously submitted and fully reviewed as CFC substitutes in the foam and refrigeration sectors. This information is part of the record for the original March 1994 SNAP rulemaking.

SNAP-approved alternatives and the HCFCs under consideration. For example, EPA recognized the flammability risks and VOC issues associated with hydrocarbons when they were originally approved as replacements for CFCs in the foam sector (59 FR 13083). In SNAP listing decisions published in December 1999 and April 2000, the Agency approved hydrocarbons for use as replacements for HCFC–141b, but indicated that hydrocarbon blowing agents are flammable and should be handled with proper precautions (64 FR 68039 and 65 FR 19327). EPA gave examples of high risk scenarios and stated that approval of hydrocarbons in certain applications would be granted only to manufacturers providing safety training to their customers (64 FR 68039 and 65 FR 19327).

Regarding the comment about toxicity of HFC–245fa, EPA does not believe there are increased human health risks associated with use of HFC–245fa versus HCFCs in the foam industry. When EPA listed HFC–245fa as an acceptable substitute, EPA's Office of Pollution Prevention and Toxics reviewed the toxicity profile of HFC–245fa and referred it to the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limit (WEEL) committee for a final exposure limit. Since then, the WEEL committee adopted an occupational exposure limit of 300 ppm (8-hour Time Weighted Average). EPA anticipates that HFC–245fa will be used in a manner consistent with recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) (64 FR 68039) and that any exposures will fall well below acceptable exposure limits set by the AIHA or other voluntary consensus standards organizations.

As part of prior SNAP determinations, the Agency has specifically reviewed the flammability and toxicological risks associated with the various alternative foam blowing agents, and consistent with its conclusion and recommendations at the time these substitutes where listed as acceptable, the Agency believes that those potential risks associated with the zero-ODP alternatives will be mitigated by the industry with appropriate health and safety procedures.

*D. HCFC–124*

Based on comments, EPA believes that interest in using HCFC–124 is limited to the rigid polyurethane appliance end-use within the foam sector. Comments on the July 11, 2000 proposal and May 23, 2001 NODA regarding new use of HCFC–124 in appliances indicate opposing views on whether HCFC–124 should be listed as an acceptable substitute for HCFC–141b.

Several comments summarized and responded to above suggested that EPA should list HCFC–124, as well as HCFC–22 and HCFC–142b, as acceptable substitutes in all foam end-uses because each of these chemicals has a lower ODP than HCFC–141b. In addition, two commenters argued that HCFC–124 provided an energy-efficient alternative to HCFC–141b while use of zero-ODP alternatives would result in energy losses. As discussed above in section III, C, 1 under *Rigid Polyurethane Appliance Foam,* EPA believes use of currently acceptable alternatives could result in energy efficient products. One commenter agreed with the Agency's proposed decision on HCFC–124 and estimated that foam blown with HFC–245fa has a 7–10% energy consumption advantage compared to HCFC–124 and, after accounting for the aging rate of the foam, that a refrigerator made with HFC–245fa blown foam would have about 15% less total global warming impact compared to a similar product made with HCFC–124. This commenter expressed confidence that the appliance industry has zero-ODP alternatives to HCFC–141b that will not adversely affect energy efficiency, including HFC–245fa. The commenter expressed concern that approval of HCFC–124 would reverse progress made by the appliance industry to eliminate compounds with an ODP, would fail to account for the availability of other, more viable non-ODP alternatives, and this would be inconsistent with the intent of the Clean Air Act and EPA's mandate to protect the environment. This commenter also expressed concern that approval would ''penalize environmentally responsible companies''.

The Agency agrees with the latter commenter and their analysis which more fully takes account of energy consumption and the total environmental impact of alternative blowing agents. As discussed, EPA does not believe that new use of HCFCs as substitutes for HCFC–141b, even for a short period of time, is warranted in all foam end-uses given the availability of zero-ODP foam blowing agents in most specific applications. In the case of rigid polyurethane appliance foam, the transition from HCFCs to zero-ODP alternatives can be made without an additional and incremental transition from HCFC–141b to HCFC–124. The Agency has identified several zero ODP foam blowing agent alternatives for the appliance foam end-uses. The Agency believes that the ozone depletion potential of HCFC–124 makes it an unacceptable substitute for HCFC–141b because other alternatives are available for the appliance foam industry that overall pose a less significant risk to human health and the environment. The information that EPA had at the time of proposal as well as the information provided by commenters since shows that the zero-ODP alternatives already listed as acceptable, compared to HCFC–124, have lower ODPs in all cases, and in some cases, lower GWPs and atmospheric lifetimes. A determination that it would be acceptable for users of HCFC–141b to switch to HCFC–124 would result in continued damage to the ozone layer and would delay the transition to zero-ODP foam blowing agents which are available.

**IV. Summary**

A major objective of the SNAP program is to facilitate the transition from ozone-depleting chemicals by promoting the use of substitutes which present a lower risk to human health and the environment (40 CFR 82.170(a)). In this light, a key policy interest of the SNAP program is promoting the quickest shift from ODSs to alternatives posing lower overall risk and that are currently or potentially available (59 FR 13044). Today's decision to list HCFC–22, HCFC–142b, and HCFC–124 as unacceptable substitutes for HCFC–141b in the end-uses discussed above is based on the Agency's finding that the use of HCFC–22 and HCFC–142b, in applications where non-ozone depleting chemicals are available, would contribute to the continued depletion of the ozone layer, and would delay the transition to alternatives that pose lower overall risk to the health and the environment.

For commercial refrigeration and sandwich panel applications, and the polyurethane slabstock and other foams end-use, EPA is listing HCFC–22 and HCFC–142b, with narrowed use limits, as acceptable replacements for HCFC–141b. EPA is strongly opposed to listing HCFCs as acceptable where non-ozone-depleting alternatives are available. However, EPA believes that ozone-friendly alternatives to HCFC–141b have not yet been fully developed and implemented across the spectrum of applications within these end-uses. In these situations, EPA believes switching to HCFC–22 and/or HCFC–142b as a bridge to non-ozone-depleting alternatives presents a lower risk than continued use of HCFC–141b.

## V. Administrative Requirements

### A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

### B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one 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. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

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.

EPA has determined that this 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 one year. This rule imposes no enforceable duty on any State, local or tribal government. The core costs of transitioning from HCFC–141b to substitutes are costs associated with the January 1, 2003 phaseout deadline for the production and import of HCFC–141b, previously established on December 10, 1993 (58 FR 65018). In the economic analysis for that rule, EPA accounted for costs to HCFC manufacturers and users to shift from, for example, HCFC–141b to substitutes. For the private sector, this rule identifies which HCFC–141b alternatives are acceptable and adds minor recordkeeping requirements for those who wish to transition from HCFC–141b to HCFC–22 or HCFC–142b in sectors where that transition is acceptable. Thus, it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. As discussed above, EPA received comments on potential small business impacts of the proposal. In response to those comments, the Agency collected additional technical information and analyzed the potential for economic impacts to small businesses. EPA found that there are some foam manufacturers who currently have technical constraints in transitioning from HCFCs to non-ozone-depleting alternatives. Based on that information, EPA is withdrawing its proposed decision to list *existing use* of HCFC–22 and HCFC–142b as unacceptable and approving narrowed use of HCFC–22 and HCFC–142b as replacements for HCFC–141b in certain applications. As provided above, EPA believes that the recordkeeping requirement associated with the narrowed use determination will not result in any substantial cost. In the end-uses for which EPA is listing HCFC–22 and HCFC–142b acceptable, small businesses will not be affected. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### D. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to

narrowed use limits, and record-keeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350.

*E. Submission to Congress and the Comptroller General*

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

*F. Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks''*

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children, as the exposure limits and acceptability listings in this final rule primarily apply to the workplace.

*G. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

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

This 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 Executive Order 13175. This rule applies to facilities that manufacture foam and not government entities. Thus, Executive Order 13175 does not apply to this rule.

*I. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards. This rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule.

*J. Executive Order 13211 (Energy Effects)*

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule lists acceptable and unacceptable substitutes for ozone-depleting chemicals in foam manufacturing. Where other approved alternatives are available and technically viable, EPA is listing HCFC–22, HCFC–142b, and HCFC–124 as unacceptable replacements for HCFC–141b. Although some comments to the proposal stated that use of other EPA approved alternatives would result in diminished insulation value and reduce the energy efficiency of products such as appliances, as discussed in the response to comments above, EPA believes that use of alternatives can result in products that are equal or superior in energy efficiency. EPA's position is supported by several appliance manufacturers who plan to meet DOE energy efficiency requirements using non-ozone-depleting foam blowing agents. Where alternatives to HCFC–141b have not been fully developed, EPA is listing HCFC–22 and HCFC–142b as acceptable in certain applications with narrowed use limits. Based on our evaluation of comments and technical data, we have concluded

that this rule is not likely to have any adverse energy effects.

### VI. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at (800) 296–1996.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at *''http://www.epa.gov/ozone/''* and from the Stratospheric Protection Hotline number as listed above.

### List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: July 12, 2002.

**Christine Todd Whitman,**

*Administrator.*

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

**Authority:** 42 U.S.C. Sec. 7414, 7601, 7671–7671q.

### Subpart G—Significant New Alternatives Policy Program

2. Subpart G is amended by adding Appendix K to read as follows:

**Appendix K to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the July 22, 2002, Final Rule, Effective August 21, 2002.**

FOAM BLOWING—UNACCEPTABLE SUBSTITUTES

| End-use | Substitute | Decision | Comments |
|---|---|---|---|
| Replacements for HCFC–141b in the following rigid polyurethane/polyisocyanurate applications:<br>—Boardstock<br>—Appliance<br>—Spray | HCFC–22, HCFC–142b and blends thereof. | Unacceptable ..... | Alternatives exist with lower or zero-ODP. |
| All foam end-uses ..... | HCFC–124 ..... | Unacceptable ..... | Alternatives exist with lower or zero-ODP. |

FOAM BLOWING—ACCEPTABLE SUBSTITUTES

| End-use | Substitute | Decision | Comments |
|---|---|---|---|
| Replacements for HCFC–141b in the following rigid polyurethane applications:<br>—Commercial Refrigeration<br>—Sandwich Panels<br>—Slabstock and Other Foams | HCFC–22, HCFC–142b and blends thereof. | Acceptable Subject to Narrowed to Narrowed Use Limits. | Users must evaluate other acceptable non-ozone-depleting substitutes to determine that HCFC–22/HCFC–142b use is necessary to meet performance or safety requirements. Users must determine that there are technical constraints that preclude the use of other available substitutes. Documentation of this evaluation must be available for review upon request. |

[FR Doc. 02–18176 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 147

**[FRL–7247–7]**

### Underground Injection Control Program Revision; Aquifer Exemption Determination for Portions of the Lance Formation Aquifer in Wyoming

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The State of Wyoming Department of Environmental Quality (WDEQ) has requested Environmental Protection Agency (EPA) approval of a revision to the State Underground Injection Control (UIC) Program, specifically that EPA approve an aquifer exemption from classification as an underground source of drinking water (USDW) for portions of the Lance Formation within the Powder River Basin in Johnson County, Wyoming.

Until August 2000, COGEMA Minerals was mining uranium from the Wasatch Formation under a UIC Class III in-situ leaching permit, issued by WDEQ. A previous Lance Formation aquifer exemption, approved by EPA in the **Federal Register** on March 26, 1999, allowed COGEMA to inject mining and mineral processing waste fluids from the Wasatch into the Lance Formation through two Class I Non-Hazardous deep injection wells permitted in 1997. COGEMA, after closing its mining operations, is extending its large-scale ground water restoration throughout the entire mined portion of the Wasatch Formation.

During the active mining process, the disposal capacity of the two existing Class I wells were adequate for the smaller scale restoration waste stream as COGEMA mined, then closed each Class III well field sequentially. However, now that COGEMA is restoring the entire mine site, large-scale restoration will produce a larger volume of waste fluid. WDEQ issued the final permit to COGEMA for the operation of two additional wells on November 3, 2000. However, COGEMA cannot inject any fluids into these wells until EPA approves this aquifer exemption.

Today's approval of this new aquifer exemption will allow COGEMA to use the newly permitted Class I injection wells to inject ground water restoration waste fluids from the Wasatch Formation into the Lance Formation. As a result of this increased disposal

capacity, COGEMA will be able to restore the Wasatch ground water more quickly and pump and treat less ground water. The rate of pumping out of the Wasatch will prevent any negative impact to the adjacent portions of this USDW.

EPA published a notice of the aquifer exemption request and asked for comments from the public in the **Federal Register** on January 30, 2001. EPA did not receive comments and after careful review of the exemption request, EPA has determined that the designated portions of the Lance Formation meet the requirements for an aquifer exemption. EPA is approving this aquifer exemption as a revision of the Wyoming UIC program. This final rule contains a table listing approved aquifer exemption areas for Class I wells on Wyoming State lands within the Lance Formation approved since January 1, 1999.

**DATES:** This rule shall become effective on August 21, 2002. In accordance with 40 CFR 23.7, this rule shall be considered promulgated for the purposes of judicial review at August 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Valois Shea, US EPA Region 8, Mail Code 8P–W–GW, 999 18th Street, Suite 300, Denver, CO 80202; (303) 312–6276.

**SUPPLEMENTARY INFORMATION:**

## I. Regulated Entities

COGEMA Mining, Inc. is the only regulated entity affected by today's action. COGEMA will derive some economic benefit as a result of this approval because the accelerated restoration will reduce the volume of waste being disposed and close the site more quickly. There is no other impact on regulated entities.

## II. Introduction

The Safe Drinking Water Act (SDWA) established the Underground Injection Control (UIC) Program, which protects underground sources of drinking water [1] (USDWs) from potential contamination from injection well practices. The UIC program regulations also provide for exempting aquifers from the definition of USDWs stated in 40 CFR 144.3. The UIC regulations, specifically 40 CFR 144.7 and 146.4, define and provide criteria for exempting aquifers.

On September 25, 2000, the EPA Regional Office in Denver, Colorado (Region 8) received a request from the Wyoming Department of Environmental Quality (WDEQ), dated September 9, 2000, submitted on behalf of COGEMA Mining, Inc. (COGEMA), for EPA to grant an aquifer exemption for the Lance Formation. This exemption surrounds two Class I [2] Non-Hazardous deep injection wells in Johnson County, WY. The exemption area includes two cylindrical volumes with centers in the wells COGEMA DW No. 2 and COGEMA DW No. 3 respectively, and a radius of 1320 feet. These volumes were determined to be required to protect adjacent portions of the USDW from contamination from the injection activity. Traditional algorithms were used to determine the minimum distance from the wells that would be affected by the injection of the restoration waste. Both wells are located in the Christensen Ranch, in Johnson County WY. The COGEMA DW No.2 is located at approximately 2,290 feet from the North line and 1130 feet from the East line SW1/4 SE1/4 NE1/4 of Section 7, Township 44 North, Range 76 West. The COGEMA DW No. 3 is located approximately 3300 feet from the North line and 1340 feet from the West line center of SW1/4 of Section 5, Township 44 North, Range 76 West. The upper boundary of the exemption is at 3800 feet below ground surface and the lower boundary is at 6500 feet below ground surface.

EPA has reviewed this aquifer exemption request and approves the request to exempt the designated portions of the Lance Formation from classification as a USDW. The technical review done by EPA included the verification of the volume of the Lance formation that would be affected by the waste. Part of this verification included determination that all contaminants injected in the wells would be precipitated out of solution, neutralized, diluted or adsorbed by the formation matrix within the volume of the exemption. The January 30, 2001 **Federal Register** document (66 FR 8234, January 30, 2001) contains a detailed discussion of the justification of this aquifer exemption approval. Today's approval exempts two cylindrical volumes with centers in the wells COGEMA DW No. 2 and COGEMA DW No. 3 respectively, and a radius of 1320 feet (approximately one square mile of the Lance Formation, at depths between approximately 3,800 to 6,500 feet below the surface). On March 26, 1999, EPA approved a similar exemption of an nearby portion of the Lance Formation for two other COGEMA Class I wells located within 2 miles of the Class I wells involved in today's final rule. EPA published a *Request for Public Comment on a Substantial Modification to the Wyoming 1422 Underground Injection Control Program* in the **Federal Register** on August 27, 1998 (63 FR 45810). EPA received no public comment and subsequently published approval of the aquifer exemption in the **Federal Register** on March 26, 1999 (64 FR 14799).

The procedures to follow for approval or disapproval of State program revisions in the UIC program are codified in 40 CFR 145.32 and described in UIC Guidance #34, *Guidance for Review and Approval of State UIC Programs and Revisions to Approved State Programs.* EPA UIC Guidance #34 also identifies criteria that EPA generally uses to determine whether or not a State program revision is substantial. The Lance Formation ground water contains less than 3,000 milligrams per liter total dissolved solids (TDS), and the aquifer exemption is associated with a Class I injection well permit. For these two reasons this aquifer exemption is a *substantial* revision of the Wyoming UIC program as approved under section 1422 of the Safe Drinking Water Act.

WDEQ determined that the Lance Formation in the exemption area is located at such a depth below the surface so as to make its use economically impractical as a possible source of drinking water. Previously, WDEQ's request for public participation in issuing the well permits focused on the poor quality of the water in the Lance formation to justify the exemption. Subsequent analysis of the water quality and geological data by EPA determined that this criterion was not adequate and was replaced with the ** * * (2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; * * * § 146.4(b)(2)).* The depth of the Lance Formation in the exemption area is between approximately 3,800 to 6,500 feet below ground surface, based on its depth at the nearer of the two other COGEMA Class I Non-Hazardous deep injection wells. WDEQ issued a public notice in local newspapers, the *Casper Star Tribune* and the Johnson County *Buffalo Bulletin* on October 2, 2000 inviting public

[1] An underground source of drinking water (USDW) means an aquifer or its portion: (a)(1) which supplies any public water system; or (2) which contains a sufficient quantity of ground water to supply a public water system; and (i) currently supplies drinking water for human consumption; or (ii) contains fewer than 10,000 milligrams/liter total dissolved solids; and (b) which is not an exempted aquifer.

[2] Injection wells are divided into 5 classes. Class I wells are associated with the disposal of industrial, municipal or radioactive waste into formations below the lowermost underground source of drinking water (USDW). These wells have strict standards for siting, construction and operation.

comment on its intent to issue a permit for the two new wells. The public comment period began October 2, 2000, and ended October 31, 2000, but WDEQ did not receive any public comments or requests for a public hearing.

On January 30, 2001, EPA published a notice in the **Federal Register** (66 FR 8234, January 30, 2001) requesting public comment on the aquifer exemption request by COGEMA, based on both the contamination (§ 146.4(b)(3)) and the location (§ 146.4(b)(2)) criteria.[3] EPA did not receive comments or requests for a public hearing.

## III. Background

Until August 2000, COGEMA operated the Christensen Ranch *in-situ* leaching uranium mine within the Wasatch Formation in Johnson and, Campbell Counties WY. The mining operation included five well fields operating under a UIC Class III [4] permit. The mining process contaminated ground water within the mined portions of the Wasatch Formation. To fulfill the mine permit closing requirements, COGEMA is engaging in large-scale ground water restoration throughout the entire mined portion of the Wasatch Formation.

COGEMA must conduct ground water restoration upon completion of mining activities to return the ground water affected by mining to baseline condition or to a condition consistent with its pre-mining or potential use. Once the ground water within the Wasatch is restored, the concentrations of contaminants in the ground water will be below drinking water standards. Complete restoration of the ground water quality within the mined-out areas of the Wasatch Formation will require a wastewater disposal capacity of 300 to 500 gallons per minute (gpm) over the next 4 to 6 years.

While mining was active, COGEMA used two Class I Non-Hazardous deep injection wells permitted in 1997 to inject mining, mineral process and ground water restoration waste fluids into the Lance Formation. Under the previously planned mining closure and aquifer restoration process, the disposal capacity of the two previously permitted Class I wells (and the volume of the previously granted aquifer exemption) would have been adequate for the long-term (18 years) restoration waste stream as COGEMA sequentially mined, then closed each Class III well field. However, now that COGEMA is restoring all areas of the mine site simultaneously, large-scale, accelerated restoration will produce a larger volume of waste fluids more quickly than the existing two Class I wells can inject it into the Lance Formation at the permitted injection rate.

Limiting the rate of the restoration process results in the generation of a *bleed stream* (discussed below) which constitutes an additional volume of waste fluids. Much of the mined portion of the Wasatch is on ''standby'' until either (a) the two new wells increase the disposal capacity, or (b) COGEMA sequentially restores each well field and completes the restoration process in other mined-out areas. In the standby areas, it is necessary to keep underground water flow directed into the mined portions until COGEMA can begin the restoration process there. Ground water flowing into the unrestored mined areas prevents contaminated water migration from the mined part of the aquifer outward into the surrounding high water quality areas of the Wasatch Formation. In order to allow underground water to flow into the standby areas, COGEMA must continuously pump ground water out of them. The term ''bleed stream'' refers to the ground water that COGEMA extracts for this purpose.[5]

The injected wastewater consists of the bleed stream described above and fluids from the restoration of the Wasatch Formation. The injectate also includes yellow cake wash water from washing any residual uranium recovered during the restoration process, laboratory wastewater, reverse osmosis brine, and ground water sweep solutions.[6] The bleed streams are non-hazardous, beneficiation [7] wastes exempt from regulation as hazardous waste under the Resource Conservation and Recovery Act as stipulated by the Bevill Amendment (40 CFR 261.4(b)(7).

Bringing the two new Class I wells on line to handle an increased volume of restoration waste water will increase the rate of the restoration process and will allow restoration to begin more immediately in the standby areas. These two new injection wells will decrease the time these mined areas will have to remain in standby mode, producing a continuous bleed stream. Use of the two new Class I injection wells will prevent the production of an additional 31 million gallons of bleed stream requiring disposal.[8] The increased rate of restoration will allow COGEMA to complete the restoration of the Wasatch Formation two years sooner than without the two additional wells.

## IV. Basis for Approval of the Aquifer Exemption

EPA approves the exemption of the designated portions of the Lance Formation because the formation meets the following criteria for exempted aquifers:

### § 146.4 Criteria for exempted aquifers

An aquifer or a portion thereof which meets the criteria for an ''underground source of drinking water'' in 146.3 may be determined under 40 CFR 144.8 [sic—should read 144.7(b)] to be an ''exempted aquifer'' if it meets the following criteria:

(a) It does not currently serve as a source for drinking water;

There are no drinking water wells, public or private, extracting water from the Lance Formation in the exemption area or within 30 miles of the exemption area.

(b) It cannot now and will not serve as a source of drinking water because:

* * * (2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical.[9]

The depth of the Lance Formation within the aquifer exemption area ranges from 3,800 to 6,500 feet. The Powder River Basin is a deep syncline [10] and the aquifer exemption area occurs

[3] Final decision to grant the exemption only under the location criterion did not occur until after this notice was published in the **Federal Register**.

[4] Class III wells are associated with the extraction of minerals, such as uranium, salts and sulfur, by in-situ mining.

[5] The mined volume acts like a vessel, which the ''bleed stream'' is continually emptying. This makes water drain into the vessel, preventing any contaminated water from flowing outside the mined area.

[6] To restore the Wasatch Formation, COGEMA must pump ground water from the mined portion and treat it by reverse osmosis. The reverse osmosis process cleans most of the water, but also generates a large volume of concentrated brine that COGEMA must inject into the Class I wells. Pumping the ground water out draws clean ground water into the mined area from surrounding areas in the Wasatch Formation and from injection wells used for injecting the previously extracted and treated ground water. This process causes the ground water to ''sweep'' through and clean the mined area. Eventually this process will restore the water in the formation to a pre-determined baseline quality.

[7] For a list of the processes included under beneficiation, please see 40 CFR 261.4(b)(7).

[8] This volume is the amount of additional bleed off fluids that would have to be disposed in the two years that this action would save.

[9] Originally the State had requested the exemption under a different criterion. Analysis of the request indicated that the stated criterion is more relevant.

[10] A syncline is a geologic structure in which earth's compressional forces deformed originally flat-lying rock strata into a large U-shaped fold where the center of the fold is deeper than the edges.

very near the center of the syncline, which is the deepest occurrence of the Lance Formation within this syncline. Retrieval of water from an aquifer at these depths is very expensive.

In addition to the great depth of the Lance Formation within the exemption area, it is also a low-yielding aquifer and does not produce a sufficient volume to supply drinking water to a public system. Verification that the Lance Formation is unable to provide a public drinking water system with a sufficient supply of water is presented by the towns of Midwest and Edgerton, WY, which depended on the Lance Formation for drinking water until 1997. These towns are located 30 miles southwest of the exemption area where the Lance Formation occurs near the surface at the western edge of the Powder River Basin. In 1997 these wells were abandoned because of low water productivity (40 gallons per minute (gpm) sustainable flow). At that time the towns of Midwest and Edgerton determined that piping in pre-treated water 50 miles from Casper, WY is more economically feasible than continuing operation of the drinking water wells completed in the Lance Formation, even at the relatively shallow depth of 1,500 to 2,000 feet. (The Wasatch formation is not present near these two towns.) Another factor in this decision was the expense of treatment that would be required to continue using the Lance wells as a public water supply (COGEMA, 1998).

Alternatively, the *Wasatch Formation* occurs 2,600 feet above the Lance Formation in the mining restoration area and provides a shallower, more prolific, better quality water supply source available for use in the area. Given this abundant, shallower supply of high quality ground water, EPA concludes that the deeper *Lance Formation* will never be required to provide drinking water in the area of the aquifer exemption. (Please note that the Wasatch is the same aquifer that COGEMA will restore to drinking water quality more quickly if these disposal wells are available to increase capacity for disposal of aquifer restoration waste fluids into the Lance Formation.)

As indicated before, neither the State of Wyoming nor EPA received comments or a request for a public hearing in response to several public notices including the January 31, 2001 notice published in the **Federal Register** (66 FR 8234) for this aquifer exemption.

## V. Regulatory Impact/Administrative Requirements

### *A. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action does not establish new monitoring and reporting requirements. Reporting by this facility, involving the injection wells, is already required by the State UIC program and it is not affected by the approval of this exemption. The approval of this aquifer exemption does not impose any additional information collection burdens.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

### *B. National Technology Transfer and Advancement Act*

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

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

### *C. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of 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 one 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.

Today's rule contains no Federal mandates (under the regulatory provision of Title II of the UMRA), for State, local or Tribal governments, or the private sector. This rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This final rule merely approves the exemption of a portion of the Lance aquifer from the definition of a USDW. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has also determined that this rule contains no regulatory requirements that

might significantly or uniquely affect small governments.

Thus, today's rule is not subject to the requirements of section 203 of UMRA.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, we defined small entities as (1) a small business based on Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on any small entities. Further, EPA received information with the exemption request and confirmed that there are no entities of any size currently using the Lance Formation as a source of drinking water within 30 miles of the aquifer exemption area.

*E. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)*

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

This 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 Executive Order 13175. This rule does not apply to any Tribal government and there are no Tribal jurisdictions on or near the area of this aquifer exemption. Thus, Executive Order 13175 does not apply to this rule.

*F. Executive Order 12866: Regulatory Planning and Review*

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

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

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

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

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

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

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13054 because it is not ''economically significant'' as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

*H. Executive Order 13132 (Federalism)*

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule does not have any substantial direct effect on the State of Wyoming or local governments in the State of Wyoming, on the relationship between the national government and the State of Wyoming or local governments in the State of Wyoming, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this rule.

*I. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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 be effective on August 21, 2002.

*J. Executive Order 13211 (Energy Effects)*

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

**VI. References**

USEPA 1998. Underground Injection Control Program: Substantial Modification to an Existing State-Administered Underground Injection Control Program, 63 FR 45810, August 27, 1998.

USEPA 1999. Underground Injection Control Program Revision; Aquifer Exemption Determination for Portions of the Lance Formation Aquifer in Wyoming; Final Rule. 64 FR 14799, March 26, 1999.

USEPA 2001. Underground Injection Control Program: Substantial Modification to an Existing State-Administered Underground Injection Control Program. 66 FR 8234, January 30, 2001.

COGEMA Mining, Inc. 1998(b). ''Submittal of Supplemental Technical Document in Support of Lance Formation Aquifer Exemption; Application for Modification of Class I UIC permit No. 95–241,'' Apr 17, 1998, COGEMA Mining, Inc., 935 Pendell Boulevard, P.O. Box 730, Mills, WY 82644.

''Approval of Programs and Revisions to Approved State Programs, GWPB Guidance #34,'' July 9, 1984, US Environmental Protection Agency, Washington, DC.

WDEQ 2000, ''Public Notice of Draft Permit 00–340,'' Oct 2, 2000, *Casper Star Tribune,* Casper, WY.

WDEQ 2000, ''Public Notice of Draft Permit 00–340,'' Oct 2, 2000, *Buffalo Bulletin,* Johnson County, WY.

**List of Subjects in 40 CFR Part 147**

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: July 12, 2002.

**Christine Todd Whitman,**

*Administrator.*

For the reasons set out in the preamble, 40 CFR part 147 is amended as follows:

## PART 147—[AMENDED]

1. The authority citation for part 147 continues to read as follows:

**Authority:** 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

## Subpart ZZ—Wyoming

2. Section 147.2555 is amended by revising the table heading and adding an entry to the table to read as follows:

**§ 147.2555 Aquifer exemptions since January 1, 1999.**

* * * * *

AQUIFER EXEMPTIONS SINCE JANUARY 1, 1999

| Formation | Approximate depth (feet below ground surface) | Location |
|---|---|---|
| Lance Formation at indicated depths and locations. | 3,800—6,500 | Two cylindrical volumes with centers in the wells COGEMA DW No. 2 and COGEMA DW No. 3 respectively, and radius of 1320 feet. Both wells are located in the Christensen Ranch, in Johnson County WY. The COGEMA DW No. 2 is located at approximately 2,290 feet from the North line and 1130 feet from the East line SW1/4 SE1/4 NE1/4 of Section 7, Township 44 North, Range 76 West. The COGEMA DW No. 3 is located approximately 3300 feet from the North line and 1340 feet from the West line center of SW1/4 of Section 5, Township 44 North, Range 76 West. |
| * * * * * * * | | |

[FR Doc. 02–18410 Filed 7–19–02; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AI61**

## Endangered and Threatened Wildlife and Plants; Listing the Sonoma County Distinct Population Segment of the California Tiger Salamander as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Emergency rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), exercise our authority to emergency list the Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*), as endangered under the Endangered Species Act of 1973, as amended (Act). Currently, only seven known breeding sites of the Sonoma County population remain. In the past two years, four breeding sites have been destroyed or have suffered severe degradation. Plans to construct a residential development will result in the loss of one of the seven remaining breeding sites and severely impact and further isolate another two of the remaining breeding sites. Because these losses constitute an emergency posing a significant and imminent risk to the well-being of the Sonoma County Distinct Population Segment of the California tiger salamander, we find that emergency listing is necessary.

This emergency rule provides Federal protection pursuant to the Act for a period of 240 days. A proposed rule to list the Sonoma County Distinct Population Segment of the California tiger salamander as endangered is published concurrently with this emergency rule in this same issue of the **Federal Register** in the Proposed Rule Section.

**DATES:** This emergency rule becomes immediately effective July 22, 2002, and expires March 19, 2003.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

**FOR FURTHER INFORMATION CONTACT:** David E. Wooten, Susan Moore, Amy LaVoie, or Chris Nagano, Sacramento Fish and Wildlife Office, at the address

listed above (telephone 916/414–6600; facsimile 916/414–6713).

**SUPPLEMENTARY INFORMATION:**

**Background**

The California tiger salamander was first described as a full species, *Ambystoma californiense,* by Gray in 1853, based on specimens that had been collected in Monterey, California (Grinnell and Camp 1917). Storer (1925) and Bishop (1943) also considered the California tiger salamander to be a species. Dunn (1940), Gehlbach (1967), and Frost (1985) stated the California tiger salamander was a subspecies of the more widespread tiger salamander (*Ambystoma tigrinum*). However, based on recent studies of the genetics, geographic distribution, and ecological differences among the members of the *A. tigrinum* complex, the California tiger salamander is now considered to be a distinct species (Shaffer and Stanley 1991; Shaffer *et al.* 1993; Jones 1993; Shaffer and McKnight 1996; Irschick and Shaffer 1997; Petranka 1998).

The California tiger salamander is a large, stocky, terrestrial salamander with small eyes and a broad, rounded snout. Adults may reach a total length of 208 millimeters (mm) (8.2 inches (in)), with males generally averaging about 203 mm (8 in) in total length, and females averaging about 173 mm (6.8 in) in total length. For both sexes, the average snout-vent length is approximately 91 mm (3.6 in). The small eyes have black irises and protrude from the head. Coloration consists of white or pale yellow spots or bars on a black background on the back and sides. The belly varies from almost uniform white or pale yellow to a variegated pattern of white or pale yellow and black. Males can be distinguished from females, especially during the breeding season, by their swollen cloacae (a common chamber into which the intestinal, urinary, and reproductive canals discharge), more developed tail fins, and larger overall size (Stebbins 1962; Loredo and Van Vuren 1996).

California tiger salamanders are restricted to California and their range does not naturally overlap with any other species of tiger salamander (Stebbins 1985; Petranka 1998). Based on genetic analysis, there are seven populations of California tiger salamanders, which are found on the Santa Rosa Plain in Sonoma County, the Sacramento Valley area (Yolo, Solano, Colusa, Contra Costa, Alameda, and Sacramento Counties), Stanislaus County, the east Central Valley (Madera, Fresno, and north Tulare Counties), the Diablo Range (western Merced and San Benito Counties), the Inner Coast Range (Monterey and San Luis Obispo Counties), and Santa Barbara County (Shaffer *et al.* 1993). The California tiger salamander on the Santa Rosa Plain in Sonoma County inhabits low elevation (below 60 meters (m) (200 feet (ft)) vernal pools and seasonal ponds, associated grassland, and oak savannah plant communities. The historic range of the species also may have included the Petaluma River watershed, as there is one historic record of a specimen from the vicinity of Petaluma from the mid-1800s (Borland 1856, as cited in Storer 1925).

California tiger salamanders on the Santa Rosa Plain in Sonoma County are geographically separated from other California tiger salamander populations. The closest California tiger salamander populations to Sonoma County are located in Contra Costa, Yolo, and Solano Counties, which are separated from the Sonoma County population by the Coast Range, Napa River, and the Carquinez Straits, a distance of about 72 kilometers (km) (45 miles (mi)).

The known breeding sites of the California tiger salamander in Sonoma County are restricted to Huichica-Wright-Zamora and Clear Lake-Reyes soils series/associations as defined by the U.S. Department of Agriculture (USDA 1972, 1990). The poorly drained soils in the Huichica-Wright-Zamora association (yellow outlined in red on Soil Map) are considered prime soils for containing wetlands, and more specifically, prime soils for habitat containing California tiger salamander (P. Northen Sonoma State University pers. comm.). The Huichica-Wright-Zamora association is restricted to the Santa Rosa Plain and the vicinity of the town of Sonoma (USDA 1972, 1990). The poorly drained soils in the Clear Lake-Reyes association are considered suitable to marginal soils for containing wetlands or habitat for California tiger salamander (Northen pers. comm.). The Clear Lake-Reyes association is found from the Cotati region south and east of Petaluma to the tidelands of northern San Francisco Bay where the salt marsh habitat is unsuitable for the California tiger salamander. There are also scattered areas of the Clear Lake-Reyes association found south and southwest of the town of Sonoma (USDA 1972, 1990). There are no known records of the California tiger salamander from the area around the town of Sonoma (D. McGriff California Department of Fish and Game pers. comm.) and there is now extensive urban and agricultural development in this portion of the County. The remainder of areas in Sonoma County outside of the two soil series/associations discussed above contain soils that are well drained, rocky, or otherwise unsuitable for habitat for the California tiger salamander.

Subadult and adult California tiger salamanders spend the dry summer and fall months of the year estivating (a state of dormancy or inactivity in response to hot, dry weather) in the burrows of small mammals, such as California ground squirrels (*Spermophilus beecheyi*) and Botta's pocket gopher (*Thomomys bottae*) (Loredo and Van Vuren 1996; Petranka 1998; Trenham 1998a). During estivation, California tiger salamanders eat very little (Shaffer *et al.* 1993). Once fall or winter rains begin, they emerge from these retreats on nights of high relative humidity and during rains to feed and migrate to the breeding ponds (Stebbins 1985, 1989; Shaffer *et al.* 1993). The salamanders breeding in, and living around, a seasonal pool or pools, and associated uplands where estivation can occur, constitute a breeding site. A breeding site is defined as a location where the animals are able to successfully breed in years of ''normal'' rainfall and complete their estivation. Normal rainfall in Santa Rosa is 76 centimeters (cm) (30 in) per year (National Weather Service 2002).

Adult California tiger salamanders may migrate up to 2 km (1.2 mi) from their estivation sites to the breeding ponds (Sam Sweet, University of California, Santa Barbara, *in litt.*, 1998). The distance between these areas depends on local topography and vegetation, and the distribution of ground squirrel or other rodent burrows (Stebbins 1989; Lawrence Hunt, consultant, *in litt.*,1998). Males migrate before females (Twitty 1941; Shaffer *et al.* 1993; Loredo and Van Vuren 1996; Trenham 1998b). Males usually remain in the ponds for an average of about 6 to 8 weeks, while females stay for approximately 1 to 2 weeks. In dry years, both sexes may stay for shorter periods (Loredo and Van Vuren 1996; Trenham 1998b). Although most marked salamanders have been recaptured at the pond where they were initially captured, in one study approximately 20 percent were recaptured at different ponds (Trenham 1998b). The rate of natural movement of salamanders among breeding sites depends on the distance between the ponds or complexes of ponds and on the intervening habitat (*e.g.*, salamanders may move more quickly through sparsely covered and more open grassland versus more densely vegetated lands) (Trenham 1998a). As with migration distances, the number of ponds used by an individual over its

lifetime will be dependent on landscape features and environmental factors.

The adults mate in the ponds and the females lay their eggs in the water (Twitty 1941; Shaffer *et al.* 1993). Females attach their eggs singly, or in rare circumstances, in groups of two to four, to twigs, grass stems, vegetation, or debris (Storer 1925; Twitty 1941). In ponds with limited or no vegetation, they may be attached to objects, such as rocks and boards, on the bottom (Jennings and Hayes 1994). After breeding, adults leave the pond and return to the small mammal burrows (Loredo *et al.* 1996; Trenham 1998a), although they may continue to come out nightly for approximately the next 2 weeks to feed (Shaffer *et al.* 1993). In drought years, the seasonal ponds may not form and the adults cannot breed (Barry and Shaffer 1994).

Eggs hatch in 10 to 14 days, with newly hatched larvae ranging from 11.5 to 14.2 mm (0.45 to 0.56 in) in total length. The young salamanders (larvae) are aquatic. They are yellowish gray in color and have broad heads, large, feathery gills, and broad dorsal fins that extend well onto their back. The larvae feed on zooplankton, small crustaceans, and aquatic insects for about 6 weeks after hatching, after which they switch to larger prey (Anderson 1968). Larger larvae have been known to consume smaller tadpoles of Pacific treefrogs (*Pseudacris regilla*) and California red-legged frogs (*Rana aurora*) (J. Anderson 1968; P. Anderson 1968). The larvae are among the top aquatic predators in the seasonal pond ecosystems. The larvae often rest on the pond bottom in shallow water, but also may be found at different layers in the water column in deeper water. The young salamanders are wary and when approached by potential predators will dart into the vegetation on the bottom of the ponds (Storer 1925).

The larval stage of the California tiger salamander usually lasts 3 to 6 months, as most ponds dry up during the summer (Petranka 1998). Amphibian larvae must grow to a critical minimum body size before they can metamorphose (change into a different physical form) to the terrestrial stage (Wilbur and Collins 1973). Individuals collected near Stockton in the Central Valley during April varied from 47 to 58 mm (1.85 to 2.28 in) in length (Storer 1925). Feaver (1971) found that California tiger salamander larvae metamorphosed into terrestrial juveniles and left the breeding ponds 60 to 94 days after the eggs had been laid, with larvae developing faster in smaller, more rapidly drying ponds. The longer the ponding duration, the larger the larvae are able to grow, and the more likely they are to survive as metamorphosed juveniles and reproduce as adults (Semlitsch *et al.* 1988; Morey 1998). The larvae will perish if a site dries before they complete metamorphosis (P.R. Anderson 1968; Feaver 1971). Pechmann *et al.* (1988) found a strong positive correlation between ponding duration and total number of metamorphosed juveniles in five salamander species.

When the metamorphosed juveniles leave their ponds, in the late spring or early summer, before the ponds dry completely, they settle in small mammal burrows at the end of their nightly movements (Zeiner *et al.* 1988; Shaffer *et al.* 1993; Loredo *et al.* 1996). Like the adults, juveniles may emerge from these retreats to feed during nights of high relative humidity (Storer 1925; Shaffer *et al.* 1993) before settling in their selected estivation sites for the dry hot summer months. Juveniles have been observed to migrate up to 1.6 km (1 mi) from breeding ponds to estivation areas (Austin and Shaffer 1992).

Lifetime reproductive success for California and other tiger salamanders is low. Trenham *et al.* (2000) found the average female bred 1.3 times and produced 8.5 young that survived to metamorphosis per reproductive effort; this resulted in roughly 11 metamorphic offspring over the lifetime of a female. Preliminary data suggest that most individuals of the California tiger salamanders require 2 years to become sexually mature, but some individuals may be slower to mature (Shaffer *et al.* 1993). Some animals do not breed until they are 4 to 6 years old. While individuals may survive for more than 10 years, many may breed only once, and, in some populations, less than 5 percent of marked juveniles survive to become breeding adults (Trenham 1998b). With such low recruitment, isolated populations can decline greatly from unusual, randomly occurring natural events as well as from human-caused factors that reduce breeding success and individual survival. Factors that repeatedly lower breeding success in isolated ponds that are too far from other ponds for migrating individuals to replenish the population can function to quickly extirpate a population.

The life history and ecology of the California tiger salamander on the Santa Rosa Plain in Sonoma County make it likely that this population has a metapopulation structure (Hanski and Gilpin 1991). A metapopulation is a set of local populations or breeding sites within an area, where typically migration from one local population or breeding site to other areas containing suitable habitat is possible, but not routine. Movement between areas containing suitable habitat (i.e., dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitat. Because many of the areas of suitable habitat may be small, and support small numbers of salamanders, local extinction of these small units may be common. A metapopulation's persistence depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas by dispersal (Hanski and Gilpin 1991, 1997; McCullough 1996; Hanski 1999).

We believe habitat loss has reduced the sizes and connectivity between patches of suitable and occupied salamander habitat on the Santa Rosa Plain. The reduction in the extent and amount of suitable water bodies, grasslands, and other suitable upland habitats likely has eliminated connectivity among most of the known breeding sites, making recolonization of some sites more difficult following local extinction. In addition, the reduction of habitat below a certain size threshold has the effect of reducing the quality of the remaining habitat by reducing the size of habitat boundaries, and making effects of other factors such as amount of food, availability of rodent burrows, pesticide use, mortality from vehicles, and predators more pronounced given the smaller area now exposed to such impacts. There is not enough data to determine what the size threshold for habitat might be, whereby any further reduction would lower the quality of the remaining habitat. But it is probable that the acreage is dependent on factors such as the type of building occurring along habitat boundaries (*i.e.,* residential, industrial, community park), number of roads bordering the habitat and the amount of traffic those roads experience, amount of pesticide use within the breeding pool watershed, or whether domestic animals or people have access to the site during periods when salamanders are vulnerable such as migrating to or from estivation sites. It is likely that there is a size beyond which the combination of various impacts will result in the loss of more salamanders than the Sonoma County California tiger salamander population can produce, and thus local extinction will occur.

**Previous Federal Action**

On September 18, 1985, we published the Vertebrate Notice of Review (NOR) (50 FR 37958), which included the California tiger salamander as a category 2 candidate species for possible future

listing as threatened or endangered. Category 2 candidates were those taxa for which information contained in our files indicated that listing may be appropriate but for which additional data were needed to support a listing proposal. The January 6, 1989, and November 21, 1991, candidate notices of review (54 FR 554 and 56 FR 58804, respectively) also included the California tiger salamander as a category 2 candidate, soliciting information on the status of the species.

On February 21, 1992, we received a petition from Dr. H. Bradley Shaffer of the University of California at Davis (UCD), to list the California tiger salamander as an endangered species. We published a 90-day petition finding on November 19, 1992 (57 FR 54545), concluding that the petition presented substantial information indicating that listing may be warranted. On April 18, 1994, we published a 12-month petition finding (59 FR 18353) that the listing of the California tiger salamander was warranted but precluded by higher priority listing actions. We elevated the species to category 1 status at that time, which was reflected in the November 15, 1994, NOR (59 FR 58982). Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals.

We discontinued the use of different categories of candidates in the NOR, published February 28, 1996 (61 FR 7596), and defined ''candidate species'' as those meeting the definition of former category 1. We maintained the California tiger salamander as a candidate species in that NOR, as well as subsequent NORs published September 19, 1997 (62 FR 49398), October 25, 1999 (64 FR 57533), and October 30, 2001 (66 FR 54808).

On June 12, 2001, we received a petition dated June 11, 2001, from the Center for Biological Diversity (CBD) and Citizens for a Sustainable Cotati to emergency list the Sonoma County population of the California tiger salamander as an endangered species and to designate critical habitat. On February 27, 2002, CBD filed a complaint for our failure to emergency list the Sonoma County population of the California tiger salamander as endangered (*Center for Biological Diversity* v. *U.S. Fish and Wildlife Service* (Case No. C–02–0558 WHA)). On June 6, 2002, based on a settlement agreement between ourselves and CBD, the court signed an order requiring us to submit for publication in the **Federal Register**, a proposal and/or emergency rule to list the species by July 15, 2002. This emergency listing rule, and the concurrently published proposed rule, complies with the settlement agreement.

**Distinct Vertebrate Population Segment**

Under the Act, we must consider for listing any species, subspecies, or, for vertebrates, any Distinct Population Segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. To implement the measures prescribed by the Act and its Congressional guidance, we, along with the National Marine Fisheries Service, developed policy that addresses the recognition of DPSs for potential listing actions (61 FR 4722). The policy allows for a more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures. Under our DPS policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS. The elements are: (1) The population segment's discreteness from the remainder of the species to which it belongs; and (2) the significance of the population segment's to the species to which it belongs. If we determine that a population segment being considered for listing represents a DPS, then the level of threat to the population is evaluated based on the five listing factors established by the Act to determine if listing it as either threatened or endangered is warranted.

**Discreteness**

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following two conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist. The proposed DPS is based on the first condition, the marked separation from other populations.

The Sonoma County population of the California tiger salamander (Sonoma County population) is discrete in relation to the remainder of the species as a whole. The population is geographically isolated and separate from other California tiger salamanders. The Sonoma County population is widely separated geographically from the closest populations which are located in Contra Costa, Yolo, and Solano Counties. These populations are separated from the Sonoma County population by the Coast Range, Napa River, and the Carquinez Straits, a distance of about 72 km (45 mi). There are no known records of the California tiger salamander in the intervening areas (Dee Warenycia, California Department of Fish and Game (CDFG), pers. comm., 2002). There is no evidence of natural interchange of individuals in the Sonoma County population with other California tiger salamander populations. As detailed below, this finding is supported by an evaluation of the genetic variability of the species.

Dr. H. Bradley Shaffer analyzed the population genetics of the California tiger salamander (Shaffer *et al.* 1993). Allozyme variation (distinct types of enzymes (proteins) in the cells, which are formed from an individuals inherited genes) and mitochondrial DNA sequence data indicate that there are seven distinct populations of the California tiger salamander. These seven populations differ markedly from each other in their genetic characteristics, with the Sonoma County population having gene sequences not found in any other populations (Shaffer *et al.* 1993). The sequence divergence between the Sonoma County population was found to diverge on the order of 2 percent from other populations of this species. This high level of genetic divergence indicates that there has been little, if any, gene flow between the Sonoma County population and other California tiger salamanders populations. Shaffer's mitochondrial DNA sequence data (Shaffer and McKnight 1996) suggest that the seven distinct populations differ markedly in their genetic characteristics, with Sonoma County California tiger salamanders having gene sequences not found in other California tiger salamanders. These levels of divergence justify separate species recognition between the Sonoma County population and the other California tiger salamander populations and may warrant separate taxonomic recognition (Shaffer *et al.* 1993; Shaffer and McKnight 1996).

**Significance**

Under our DPS policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to, evidence of the persistence of the discrete population segment in an ecological setting that is unique for the taxon; evidence that loss of the population segment would result in a

significant gap in the range of the taxon; evidence that the 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; and evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. We have found substantial evidence that two of these significance factors are met by the population of the California tiger salamander that occurs on the Santa Rosa Plain in Sonoma County.

The extinction of the Sonoma County population would result in the loss of a significant genetic entity and the curtailment of the range of the species. As discussed above, the Sonoma County population is genetically distinct from other populations of California tiger salamanders. Loss of the Sonoma County population would eliminate the most northern coastal extent of the range of the species. The Sonoma County population is geographically isolated. Genetic analysis of the species supports the hypothesis that no natural interchange of the Sonoma County population occurs with other California tiger salamander populations.

**Conclusion**

We evaluated the Sonoma County population as a DPS, addressing the two elements which our policy requires us to consider in deciding whether a vertebrate population may be recognized as a DPS and considered for listing under the Act. We conclude that the Sonoma County population is discrete, as per our policy, based on its geographic separation and genetic divergence from the rest of the California tiger salamander populations. We conclude that the Sonoma County population of the California tiger salamander is significant because the loss of the species from the Santa Rosa Plain in Sonoma County would result in a significant reduction in the species' range and would constitute loss of a genetically divergent portion of the species. Because the population segment meets both the discreteness and significance criteria of our DPS policy, the DPS qualifies for consideration for listing. An evaluation of the level of threat to the DPS based on the five listing factors established by the Act follows.

**Summary of Factors Affecting the Species**

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act describe the procedures for adding species to the Federal list. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Sonoma County DPS of the California tiger salamander (Sonoma County California tiger salamander) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

The Sonoma County California tiger salamander population, as well as the population in Santa Barbara County, which we listed as endangered (65 FR 57242), are considered to be the most vulnerable of the seven populations of the California tiger salamander (Shaffer et al. 1993; LSA Associates 2001). Urban development is the primary threat to the Sonoma County California tiger salamander. The species now occurs in scattered and increasingly isolated breeding sites within a small portion of its historic range on the Santa Rosa Plain in Sonoma County. Four known breeding sites have been destroyed in the last two years. All of the seven known extant breeding sites are distributed in the City of Santa Rosa, and the immediate associated unincorporated areas, an area approximately 8 km (5 mi) by 6 km (4 mi) wide. Within this area and south to the Cotati area, there are scattered records of adult salamanders crossing roads during the fall and winter rains, and also instances of breeding in roadside ditches. However, these roadside ditches likely do not represent viable breeding sites because they either do not have sufficient ponding duration and/or associated uplands for estivation.

The seven known breeding sites are imperiled by the construction of high-density housing, office buildings, road construction, and other development. The survival and viability of the Sonoma County California tiger salamander is directly related to availability of breeding pools with hydrological and other factors conducive to their reproduction. There also must be adequate upland acreage, with associated small mammal burrows, in the vicinity of the Sonoma County California tiger salamander breeding pools to accommodate estivation. The Santa Rosa Plain once contained extensive valley oak woods, native grasslands, riparian, and vernal pools. Vernal pools and seasonal wetlands likely were extensive, due to the flat terrain, clay soils, and relative high rainfall (CH2M Hill 1995). Based on the topography and habitat type of the lands that have been converted to urban development and agriculture on the Santa Rosa Plain, the number of breeding ponds, the extent of upland habitats, and the quality of the remaining habitats has been greatly reduced since Europeans first settled the region.

The extent of the historic range of the California tiger salamander within the Santa Rosa Plain in Sonoma County is uncertain due to limited information collected on this population prior to the 1990s (Shaffer *et al.* 1993; Jennings and Hayes 1994). However, based on the habitat requirements of the species for low elevation, seasonally filled breeding ponds and small rodent burrows, the ecology of the taxon, the general trend of urban development into suitable and occupied habitat, and other adverse factors affecting the species, we believe that it once occupied a more extensive, but still limited area within the Santa Rosa Plain.

There are no available estimates of the total number of individual Sonoma County California tiger salamanders. The difficulty of estimating total California tiger salamander population size has been discussed by a number of biologists (Shaffer *et al.* 1993; Jennings and Hayes 1994). However, estimates have been made for only a few populations in Monterey County (Barry and Shaffer 1994; Trenham *et al.* 1996). This is due to the lack of data about the numbers of individuals of the Sonoma County California tiger salamander, the fact that these amphibians spend much of their lives underground, and the fact that only a portion of the total number of animals migrate to the ponds to breed every year.

A 1990 study of the Santa Rosa Plain found that 25 percent of an 11,300 hectare (ha) (28,000 acres (ac)) study area had been converted to subdivisions, ''ranchettes,'' golf courses, and commercial buildings (Waaland *et al.* 1990). An additional 17 percent of the study area had been converted to agricultural uses. Since 1990, many more acres have been urbanized and converted to intensive agriculture, particularly vineyards. Even relatively minor habitat modifications, such as construction of roads, storm drains, and road curbs that traverse the area between breeding and estivation sites, increase habitat fragmentation, impede or prevent migration, and result in direct and indirect mortality (Mader 1984; S. Sweet, *in litt.,* 1993, 1998; Findlay and Houlahan 1996; Launer and Fee 1996; Gibbs 1998). All of the known Sonoma County California tiger salamander breeding pools are within 450 m (1,476 ft) of roads and residential

development, and five of the seven remaining viable breeding locations are within 100 m (328 ft) of major development activities.

Urban Development

Urban development poses a significant threat to all of the known breeding sites of the Sonoma County California tiger salamander. All of these sites are found in and around the former Santa Rosa Air Center that is located in west Santa Rosa. This area contains one of the largest undeveloped blocks of land within the city limits of Santa Rosa. Urban development is proposed on or near locations containing three of the seven known breeding sites in the Santa Rosa area (Santa Rosa Department of Community Development 1994; EIP Associates 2000). The airport was closed and the property sold to the City of Santa Rosa in the mid-1980s. The City of Santa Rosa is proposing the majority of the area be developed as part of their Southwest Area Plan (Santa Rosa Department of Community Development 1994; EIP Associates 2000). Urban development of this area is proceeding rapidly. Demographic data obtained from the City of Santa Rosa Housing and Community Development Commission indicate that since 1980, Santa Rosa has experienced a greater than 53 percent increase in its population. From 1980 until 1997, the number of housing units grew by 66 percent from 35,403 units in 1980 to 53,558 units by January 1, 1997 (Michael Enright, City of Santa Rosa, pers. comm., 2001).

Four known breeding sites were lost within the past two years, two of which were lost due to urban development/housing with another lost to commercial development. As recently as June 2002, the fourth breeding site near Cotati was destroyed when the pond was filled for unknown reasons (David Cook, The Wildlife Society, *in litt.,* 2002; Liam Davis, CDFG, *in litt.,* 2002). The Cotati location was considered highly productive for salamanders (D. Cook, *in litt.,* 2002).

Roads and Highways

California tiger salamanders require a large amount of barrier-free landscape for successful migration (Shaffer *et al.* 1993; Loredo *et al.* 1996). Roads and highways are permanent physical obstacles that can block the animals from moving to new breeding habitat, or prevent them from returning to their breeding ponds or estivation sites. Road construction can reduce or completely eliminate a breeding site, and in some cases, larger portions of a metapopulation.

All the pools at the known extant Sonoma County California tiger salamander breeding sites are within 460 m (1,509 ft) of roads of various sizes. Findlay and Houlahan (1996) found that roads within 2000m (1.2 mi) of wetlands adversely affected the number of amphibian species. The Federal Emergency Management Agency (FEMA)/Broadmore North Preserve, and Hall Road Preserve are the only lands with known breeding sites where salamanders can access breeding pools from estivation areas without crossing roads.

Large numbers of California tiger salamanders at some locations in the Central Valley, up to 15 or 20 per mile of road (Joe Medeiros, Sierra College, pers. comm., 1993), have been killed as they crossed roads on breeding migrations (Hansen and Tremper 1993; S. Sweet, *in litt.,* 1993). Estimates of losses to automobile traffic range from 25 to 72 percent of the breeding population for several different populations of the species (Twitty 1941; S. Sweet, *in litt.,* 1993; Launer and Fee 1996). Curbs and berms as low as 9 to 13 cm (3.5 to 5 in), which allow salamanders to climb onto the road but can restrict or prevent their movements off the roads, can effectively turn the roads into sources of high mortality (Launer and Fee 1996; S. Sweet, *in litt.,* 1998). Automobile traffic along Stony Point Road in western Santa Rosa has probably quadrupled in the past 5 years (D. Cook, pers. comm., 2002). This was once a moderately used rural road and is now a major route for commuter traffic. Between November 21, 2001, and December 5, 2001, 26 California tiger salamanders were found killed by cars on this road between Santa Rosa and Cotati. Fourteen of these dead California tiger salamanders were found along Stoney Point Road near Meachum Road (D. Cook, pers. comm., 2002).

Description of the Breeding Sites

Except for the Hall Road Preserve and the FEMA/Broadmore North Preserve, all of the known breeding sites of the Sonoma County California tiger salamander are found on small locations in areas being rapidly converted from low-intensity farming, cattle grazing, and low-density housing, to high density housing, and office buildings. The Hall Road Preserve and the FEMA/Broadmore North Preserve have hydrologic regimes that are adequate to provide recruitment for SCTS in normal to dry years. All other known breeding locations are either slated for development or will have their hydrology altered by disrupting the natural runoff from surrounding uplands. A description of the known extant breeding sites of the Sonoma County California tiger salamander is presented below.

(1) *Hall Road Preserve:* This 74 ha (183 ac) site is owned by CDFG. It is the largest preserved area where the Sonoma County California tiger salamander is currently known to occur. It contains two pools with ponding levels adequate for successful breeding during drought years. This preserve contains seven additional breeding pools that are relatively shallow and do not pond water long enough for successful breeding in years of moderate to low rainfall. Surveys conducted over the past 2 years indicate this preserve does not function as a highly productive breeding site (Cook and Northern 2001). The land surrounding the preserve is privately owned, and the City of Santa Rosa has issued permits for urban development. Urban development has occurred on adjacent lands to the east and west, and agriculture to the north of the preserve. Exotic predators of the salamander, such as Louisiana crayfish (*Procrambus clarkii*), sticklebacks (*Gasterosteus aculeatus,* a fish), and possibly bullfrogs (*Rana catesbeiana*) are present at the Hall Road Preserve.

(2) *FEMA/Broadmore North Preserve:* This breeding site consists of two properties, the FEMA Preserve and the Broadmore North Preserve. The 24 ha (59 ac) FEMA Preserve is owned by CDFG and it contains one of the most productive Sonoma County California tiger salamander breeding sites. The 6.5 ha (16 ac) Broadmore North Preserve is a conservation area that was set aside as mitigation by the Bellvue School District. It is also managed by CDFG. The two breeding sites are contiguous and encompass 30 ha (75 ac) containing three breeding pools. The FEMA Preserve has two large, deep pools that remain ponded late in the season. Salamanders probably breed there during most years. The one breeding pool on Broadmore North is shallow and does not contribute salamanders to the population in dry years (i.e., there is no recruitment) (D. Cook, pers. comm., 2001). While there is no hydrological connection between this site and the deeper pools contained on the FEMA Preserve, the FEMA Preserve probably allows the salamanders at the Broadmore North Preserve the opportunity to breed during dry years. Urban development has occurred to the north and east sides of the preserves. Although these breeding sites are protected, urbanization imperils upland habitats on private land to the east and west of them. A new road and housing development on lands adjacent to the

preserves' western boundaries have been permitted by City of Santa Rosa. This new road and construction will eliminate the western migration route between Southwest Air Center and the FEMA and Broadmore North preserves for salamander from this breeding site.

(3) *Northwest Air Center:* This breeding site is composed of one breeding pond and is located on private land. Much of the associated upland has recently been developed. This site is bordered on the west and north by roads subject to heavy traffic from housing developments that have been constructed under the City of Santa Rosa's Southwest Area Development Plan. Housing has eliminated migration routes to the east and south, thus leaving this site as an isolated breeding site with less than 22 ha (55 ac) of remaining undeveloped upland area and pool with private lands surrounding it to the south and east (M. Enright, pers. comm., 2001).

(4) *Southwest Air Center:* This breeding site is located on private land and it contains one breeding pool. The City of Santa Rosa has issued permits for a residential development that likely will result in the elimination of the salamanders at this location. Preparation of this site for construction has been initiated. The grading of the upland areas in the summer dry season likely will eliminate estivating salamanders at this site. The salamanders at this location also may utilize the breeding ponds at the FEMA and Broadmore North preserves by an existing migration corridor to the east. The destruction of this breeding site likely will further isolate the animals inhabiting this location. Loss of this breeding site will contribute to the overall isolation of the remaining breeding sites. Based on the completion time of the construction of other approved projects in the area, the West Air Center breeding site likely will be lost by September 2002.

(5) *North Air Center:* There is one breeding pool on this privately owned site. Recent residential and commercial developments which border this breeding site on three sides severely restrict the potential for migration. The City of Santa Rosa has approved residential and road projects for this location that will adversely affect the salamanders. This site is bordered by houses to the west, a road with high levels of automobile traffic to the north, and a corporate park to the east. There is a small tract of undeveloped private land to the south. No protection exists for the uplands or breeding pool which is located directly south of Sebastopol Road. The upland area is about 15 ha (37 ac). Portions of Sebastopol Road have been widened to four traffic lanes, including the construction of storm drains and curbs. The curbs likely funnel migrating salamanders into storm drains where they perish after being washed into the sewer system. Residential and commercial projects currently are under construction in this area, and this breeding site likely will be significantly degraded and completely isolated by September, 2002.

(6) *Wright Avenue:* This breeding site is located on private land. Approved development described in the City of Santa Rosa's Southwest Area Development Plan will isolate this breeding site through increased automobile traffic and residential development along Wright and Ludwig avenues. Additionally, there is no construction specifically proposed for this property, but no protection exists to prevent the breeding site and associated uplands from being developed.

(7) *South Ludwig Avenue:* This breeding site is located on private land and current threats to the salamanders include increased traffic along Ludwig Avenue due to increasing residential development. The breeding site and associated uplands are currently not protected from potential development on the property.

Conclusion for Factor A

Maintenance of tracts of habitat between breeding sites will likely play a pivotal role in maintenance of the Sonoma County California tiger salamander metapopulation dynamics. If breeding sites are eliminated and the metapopulation becomes so fragmented that individuals are unable to disperse between suitable patches of habitat, the probability of natural recolonization will not offset the probability of extinction, with a result of population extinction. Some of the salamander breeding sites, such as the FEMA Preserve/Broadmore North Preserve and the pools at the Hall Road Preserve, are linked to each other by suitable habitat. If movements through these linkages are disrupted or precluded (e.g., by urban development), then the stability of the metapopulation (i.e., the exchange of individuals between breeding sites) will be affected. Isolation, whether by geographic distance or ecological factors, will prevent the influx of new genetic material, and may result in inbreeding and extinction (Levin 2002). We believe that the Sonoma County California tiger salamander is at risk from increasing fragmentation and isolation that is the result of urban development.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The larvae of non-native tiger salamanders are used as bait by some fishermen and are still sold in California for this purpose. The extent of the use of the Sonoma County California tiger salamander for this purpose is unknown.

Tiger salamanders are considered to be excellent pets by amateur herpetologists (Porras 2002). The Sonoma County California tiger salamander does not appear to be particularly popular among amphibian and reptile collectors; however, Federal listing could raise the value of the species within wildlife trade markets and increase the threat of unauthorized collection above current levels (Special Agent Ken McCloud, Service, pers. comm., 2002). Even limited interest in the species could pose a serious threat to the small population of this species.

*C. Disease or Predation*

Disease

The specific effects of disease on the Sonoma County California tiger salamanders is not known and the risks to the animal have not been determined. Large numbers of dead and dying California tiger salamanders were observed in a pond in the Los Alamos Valley in Santa Barbara County, but the cause was not determined (S. Sweet, pers. comm., 1998). Several pathogenic (disease-causing) agents, including at least one bacterium (Worthylake and Hovingh 1989), a water mold (fungus) (Kiesecker and Blaustein 1997; Lefcort *et al.* 1997), and a virus (McLean 1998), have been associated with die-offs of tiger salamanders, as well as other amphibian species. Since Sonoma County California tiger salamanders are found in only a few sites in a relatively small area, a disease outbreak could devastate one or all of the known extant breeding sites if introduced into Sonoma County.

Worthylake and Hovingh (1989) described repeated die-offs of tiger salamanders (*Ambystoma tigrinum*) at Desolation Lake in the Wasatch Mountains of Utah. Affected salamanders had red, swollen hind legs and vents, and widespread hemorrhage of the skin and internal organs. The researchers determined that the die-offs were due to infection from the bacterium *Acinetobacter.* The number of bacteria in the lake increased with increasing nitrogen levels as the lake dried. The nitrogen was believed to come from both atmospheric deposition and waste from sheep grazing in the

watershed (Worthylake and Hovingh 1989). *Acinetobacter* are common in soil and animal feces.

Lefcort *et al.* (1997) found that tiger salamanders raised in natural and artificial ponds contaminated with silt were susceptible to infection by the water mold *Saprolegnia parasitica* at a location in Georgia. The fungus first appeared on the feet, spread to the entire leg, and then infected animals died. Die-offs of western toads (*Bufo boreas*), Cascades frogs (*Rana cascadae*), and Pacific treefrogs also have been associated with *Saprolegnia* infections (Kiesecker and Blaustein 1997). *Saprolegnia* is widespread in natural waters and commonly grows on dead organic material (Wise 1995).

In addition to the *Acinetobacter,* viruses associated with die-offs of tiger and spotted salamanders in Maine and North Dakota, have been isolated (McLean 1998). In 1995, researchers reported similar die-offs attributed to an iridovirus in southern Arizona and near Regina, Saskatchewan, Canada (McLean 1998). Iridoviruses are found in both fish and frogs and may have been introduced to some sites through fish stocking programs. Little is known about the historical distribution of iridoviruses in salamander populations. The virus may be carried by birds, such as herons and egrets (Family Ardeidae), that feed on the salamanders. Such a virus could be devastating to the Sonoma County California tiger salamanders.

Predation

Predation and competition by introduced or non-native species potentially affects all of the seven known Sonoma County California tiger salamander breeding sites. Bullfrogs prey on California tiger salamander larvae (P.R. Anderson 1968; Lawler *et al.* 1999). Morey and Guinn (1992) documented a shift in amphibian community composition at a vernal pool complex, with California tiger salamanders becoming proportionally less abundant as bullfrogs increased in number. Although bullfrogs are unable to establish permanent breeding populations in unaltered vernal pools and seasonal ponds, dispersing immature frogs take up residence in pools during winter and spring (Morey and Guinn 1992), and may prey on native amphibians, including larval salamanders. One of the pools at the Hall Road breeding site, and two of the pools contained at the FEMA/Broadmore North preserves, are located within 46 m (150 ft) of ditches or creek channels known to contain bullfrogs or crayfish. Bullfrogs likely occur in Roseland Creek , which is near the FEMA/Broadmore North preserve (D. Cook, pers. comm., 2002). Bullfrogs are likely present in ditches that cross the Hall Road Preserve (D. Cook, pers. comm., 2002).

Mosquito fish (*Gambusia affinis*), rather than pesticides, are often placed into ponds by vector control agencies to eliminate mosquitoes. Salamanders may be especially vulnerable to mosquito fish predation due to their fluttering external gills, which may attract these visual predators (Graf 1993). Loredo-Prendeville *et al.* (1994) found no California tiger salamanders inhabiting ponds containing mosquito fish. Mosquito fish prey on other amphibian species, such as the California newt (*Taricha torosa*) (Gamradt and Kats 1996) and Pacific treefrog (Goodsell and Kats 1999) tadpoles in both field and laboratory experiments, even given the optional prey of mosquito larvae (Goodsell and Kats 1999; Lee Kats, Pepperdine University, pers. comm., 1999). Robert Stebbins observed mosquito fish ingesting and then spitting out California newt larvae, causing severe damage to the newts in the process (Graf 1993). Given the effects of mosquito fish on other amphibian species, they are likely to have similar effects on California tiger salamanders. If they have the same effects, the use of mosquito fish in California tiger salamander habitat threatens the persistence of the species, especially in the isolated and decline Sonoma County California tiger salamander population.

Other fish, such as sticklebacks, may prey on the Sonoma County California tiger salamander. One pool at the Hall Road Preserve appears to have all of the biological components for successful California tiger salamander breeding, but has a small connector to a drainage ditch containing stickleback. Sonoma County California tiger salamanders have never been found at this site, and it is suspected that predation of their eggs and larvae by this fish is the limiting factor (D. Cook, pers. comm., 2002).

Crayfish also apparently prey on California tiger salamanders (Shaffer *et al.* 1993) and may have eliminated some populations (Jennings and Hayes 1994). The crayfish prey on California newt eggs and larvae, in spite of toxins produced by these amphibians, and they may be a significant factor in the loss of newts from several streams in southern California (Gamradt and Kats 1996). These crayfish have been found at both the FEMA/Broadmore North and Hall Road Preserves. At the FEMA property, crayfish were found in the pool (D. Cook, pers. comm., 2002). The crayfish likely came from the adjacent Roseland Creek Channel. Louisiana crayfish have been found in the ditches that cross the Hall Road Preserve, but not at any of the pools known to support Sonoma County California tiger salamander populations (D. Cook, pers. comm., 2002). The presence of both stickleback and crayfish, along with the suspected presence of bullfrogs, could affect the Hall Road Preserve. The Hall Road Preserve is one of only two breeding sites that still contain pools with migration corridors that accommodate the transfer of genetic material between pools, while also allowing for the repopulation of individual pools in the event of a randomly occurring catastrophic event.

California tiger salamander larvae also are preyed upon by many native species. In healthy salamander populations, such predation is probably not a significant threat. But when combined with other impacts, such as predation by non-native species, contaminants, migration barriers, or habitat alteration, it may cause a significant decrease in population viability. Native predators include great blue herons (*Ardea herodias*) and egrets, western pond turtles (*Clemmys marmorata*), various garter snakes (*Thamnophis* spp.), larger California tiger salamander larvae, larger spadefoot toad (*Scaphiopus hammondii*) larvae, and California red-legged frogs (Mike Peters, Service, *in litt.*, 1993; Hansen and Tremper 1993).

*D. The Inadequacy of Existing Regulatory Mechanisms*

The primary cause of the decline of the Sonoma County California tiger salamander is the loss, degradation, and fragmentation of habitat from human activities. Federal, State, and local laws have been insufficient to prevent past and ongoing losses of the limited habitat of the Sonoma County California tiger salamander.

Federal

Under section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344 *et seq.*), the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, including wetlands. Section 404 regulations require applicants to obtain a permit for projects that involve the discharge of fill material into waters of the United States, including wetlands. However, normal farming activities are exempt under the CWA and do not require a permit (53 FR 20764; Robert Wayland III, Environmental Protection Agency (EPA), *in litt.*, 1996). Projects

that are subject to regulation may qualify for authorization to place fill material into headwaters and isolated waters, including wetlands, under several nationwide permits. The use of nationwide permits by an applicant or project proponent is normally authorized with minimal environmental review by the Corps. No activity that is likely to jeopardize the continued existence of a threatened or endangered species, or that is likely to destroy or adversely modify designated critical habitat of such species, is authorized under any nationwide permit. An individual permit may be required by the Corps if a project otherwise qualifying under a nationwide permit would have greater than minimal adverse environmental impacts.

Three federally endangered plants, Sonoma sunshine (*Blennosperma bakeri*), Sebastopol meadowfoam (*Limnanthes vinculans*), and Burke's goldfields (*Lasthenia burkei*) occur on the Santa Rosa Plain of Sonoma County in the vicinity of Sonoma County California tiger salamander. However, little overlap occurs between the viable breeding sites of this species and these federally listed vernal pool species. Any Corps consultation requirement for fill of pools on the Santa Rosa Plain would be triggered by the listed plants. Since the salamander and the federally listed plants do not substantially overlap, salamander breeding pools are unlikely to be protected by presence of the plants or their habitat. Furthermore, even if breeding pools of this animal are avoided due to the presence of a federally listed plant species, this protection may only extend to the pool itself with a small upland buffer. Since Sonoma County California tiger salamanders spend up to 80 percent of their life in small mammal burrows in upland habitats surrounding breeding pools, the protection of the pool itself, with concurrent loss of uplands surrounding the pool, would still result in the loss of local Sonoma County California tiger salamander breeding sites.

Recent court cases may further limit the Corps' ability to utilize the CWA to regulate the fill or discharge of fill or dredged material into the aquatic environment within the current range of the Sonoma County California tiger salamander (*Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) (SWANCC)). The effect of SWANCC on Federal regulation of activities in wetlands in the area of the Sonoma County California tiger salamander has recently become clear by the Corps' failure to assert its jurisdiction over fill of several wetlands within the range of the Sonoma county California tiger salamander. In a letter from the Corps dated March 8, 2002, concerning the fill of 0.18 ha (0.45 ac) of seasonal wetlands southwest of the intersection of Piner and Marlow Roads (Corps File Number 19736N), the Corps referenced the SWANCC decision and reiterated that the subject wetlands were not ''waters of the United States'' because they were: (1) Not navigable waters; (2) not interstate waters; (3) not part of a tributary system to 1 or 2; (4) not wetlands adjacent to any of the foregoing; and (5) not an impoundment of any of the above. The letter further stated that the interstate commerce nexus to these particular waters is insufficient to establish CWA jurisdiction, and therefore, not subject to regulation by the Corps under section 404 of the CWA. The Corps also cited the SWANCC decision as their reasoning for not taking jurisdiction over fill of Sonoma County California tiger salamander breeding pools at the recently constructed South Sonoma Business Park.

State

The CDFG recognizes the California tiger salamander as a species of special concern. This designation does not provide the species with any protection from actions that injure or kill them, or damage or destroy their habitat. The California tiger salamander is not protected under the California Endangered Species Act.

The California Environmental Quality Act (CEQA) (Public Resources Code Sec. 21000–21177) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over a project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines, as amended, requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed endangered species and/or their habitat. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency involved.

Local

We are not aware of any specific county or city ordinances that provide protection for the Sonoma County California tiger salamander.

*E. Other Natural or Manmade Factors Affecting its Continued Existence*

Several other factors, including contaminants, ground squirrel and gopher control, hybridization with non-native salamanders, predation, and competition with introduced species may have negative effects on California tiger salamanders and their aquatic and upland habitats. These factors are discussed below.

Contaminants

Sonoma County California tiger salamanders probably are exposed to a variety of pesticides and other chemicals throughout their range. Sonoma County California tiger salamanders also could die from starvation by the loss of their prey base. Hydrocarbon and other contamination from oil production and road runoff; the application of numerous chemicals for roadside maintenance; urban/suburban landscape maintenance; and rodent and vector control programs may all have negative effects on tiger salamander populations, as detailed below.

Road mortality is not the only risk factor associated with roads, as oil and other contaminants in runoff have been detected in adjacent ponds and linked to die-offs and deformities in California tiger salamanders and spadefoot toads, and die-offs of invertebrates that form most of both species' prey base (S. Sweet, *in litt.*, 1993). Lefcort *et al.* (1997) found that oil had limited direct effects on 5-week-old marbled (*Ambystoma opacum*) and tiger salamanders (*A. t. tigrinum*). However, it was found that salamanders from oil-contaminated natural ponds metamorphosed earlier at smaller sizes, and those from oil-contaminated artificial ponds had slower growth rates, than larvae raised in non-contaminated ponds. Their studies did not address effects on eggs and early larval stages, where the effects may be more pronounced.

Hatch and Burton (1998) and Monson *et al.* (1999) investigated the effects of one component of petroleum products and urban runoff (fluoranthene, a polycyclic aromatic hydrocarbon) on spotted salamanders (*A. maculatum*), northern leopard frogs (*Rana pipiens*), and African clawed frogs (*Xenopus laevis*). In laboratory and outdoor experiments, using levels of the

contaminant comparable to those found in service station and other urban runoff, the researchers found reduced survival and growth abnormalities in all species and that the effects were worse when the larvae were exposed to the contaminant under natural levels of sunlight, rather than in the laboratory under artificial light. In Sonoma County, there are a number of records of California tiger salamanders using roadside ditches. Many are in areas where there are no known breeding ponds, and these animals are utilizing the only marginal habitat remaining. Also, many pools in these areas have likely been destroyed, leaving these marginal sites as the only option for breeding. In light of the increased urbanization occurring in this area, with concurrent increases in traffic, the risk factor associated with contaminants in runoff likely will rise in both roadside ditches and across the general landscape.

Agricultural and Landscaping Contaminants

In Sonoma County, over 1.4 million kilograms (3.1 million pounds) of agricultural chemicals were used in 2000 on grapes, apples, rights of way, structural pest control, and landscape maintenance (California Department of Pesticide Regulation (CDPR), Internet Website). Chemical use occurring on or near tiger salamander breeding sites in Sonoma County is primarily associated with rights of way, structural pest control, and landscape maintenance. These chemicals included metam-sodium, methyl bromide, mancozeb, petroleum oil, phosmet, chlorpyrifos, pendimethalin, parathion, paraquat dichloride, fosetyl-aluminum, acephate, cryolite, and malathion, some of which are extremely toxic to aquatic organisms, such as amphibians and the organisms on which they prey.

Even if toxic or detectable amounts of pesticides are not found in the breeding ponds or groundwater, salamanders may still be affected, particularly when chemicals are applied during the migration and dispersal seasons. All of the remaining seven documented salamander breeding sites in Sonoma County may be directly or indirectly affected by toxic landscaping chemicals due to the presence of housing developments within their drainage basins.

Rodent Control

California tiger salamanders spend much of their lives estivating in underground retreats, typically in the burrows of ground squirrels and gophers (Loredo *et al.* 1996; Trenham 1998a). Widespread ground squirrel control programs were begun in California as early as 1910, and are carried out on more than 4 million ha (9.9 million ac) in California (Marsh 1987). It is unclear how effective such control programs were in reducing ground squirrel populations. According to Marsh (1987), when a ground squirrel population is at or near carrying capacity, it must be reduced by at least 90 percent annually for several years to significantly reduce the population. However, it may not be practical to attain such high reduction rates over large areas of rangelands, but it may be possible to reduce populations to low numbers (Salmon and Schmidt 1984). In some primarily agricultural counties, the ground squirrel population has been reduced and maintained at perhaps 10 to 20 percent of the carrying capacity. Rodent control programs are conducted by individual land owners and managers on grazing, vineyard, and crop production lands (Rosemary Thompson, Science Applications International Corporation, *in litt.*, 1998).

Pocket gopher and ground squirrel burrows are most often used by California tiger salamanders in Sonoma County (D. Cook, pers. comm., 2001). Both of these animals are classified as nongame mammals by CDFG. This means that if they are found to be injuring growing crops or other property, including garden and landscape plants, they may be controlled at any time and in any legal manner by the owner or the tenant of the premises (University of California Integrated Pest Management (UCIPM), internet website 2002).

Legal methods of pocket gopher control include trapping, strychnine-treated grain bait, and anticoagulant baits. Poisoned grains (anticoagulant baits) are the most common method used to control ground squirrels around homes and other areas where children, pets, and poultry are present (UCIPM 2002; Jon Shelgrin, CDPR, pers. comm., 2002). Zinc phosphide is highly toxic to freshwater fish and to non-target mammals (EXOTONET 1996). Zinc phosphide, a rodenticide and restricted material, turns into phosgene gas, a toxic gas once ingested by the rodents. There is little risk of California tiger salamanders ingesting any of these baits; however the use of these grains may impact the California tiger salamanders indirectly if washed into burrows or ponds used by the species.

Two of the most commonly used rodenticides, chlorophacinone and diphacinone, are anticoagulants that cause animals to bleed to death. They can be absorbed through the skin and are considered toxic to fish and wildlife (EPA 1985; Extension Toxicology Network (EXTOXNET) 1999). These two chemicals, along with strychnine, are used in Sonoma County to control rodents (R. Thompson, *in litt.*, 1998). Although the effects of these poisons on California tiger salamanders have not been assessed, use along roadways or surrounding residential areas may result in contamination of salamander breeding ponds, with undetermined effects. Gases, including aluminum phosphide, carbon monoxide, and methyl bromide, can be introduced into burrows either by using cartridges or by pumping. When such fumigants are used, all animals inhabiting the burrow are killed (Salmon and Schmidt 1984).

In addition to possible direct effects of rodent control chemicals, control programs probably have an adverse indirect effect on California tiger salamander populations. Control of ground squirrels could significantly reduce the number of burrows available for use by the Sonoma County California tiger salamander (Loredo-Prendeville *et al.* 1994). All of the remaining Sonoma County California tiger salamander breeding locations exist in areas that are likely to experience a heightened degree of rodent control due to landscaping concerns surrounding residential developments. Because the burrow density required to support California tiger salamanders in an area is not known, the loss of burrows as a result of control programs cannot be quantified at this time. However, Shaffer *et al.* (1993) stated that rodent control programs may be responsible for the lack of California tiger salamanders in some areas. Active ground squirrel colonies probably are needed to sustain tiger salamanders because inactive burrow systems become progressively unsuitable over time. Loredo *et al.* (1996) found that burrow systems collapsed within 18 months following abandonment by or loss of the ground squirrels. Although the researchers found that California tiger salamanders used both occupied and unoccupied burrows, they did not indicate that the salamanders used collapsed burrows. Rodent control programs must be analyzed and implemented carefully in California tiger salamander habitat so the persistence of the animals is not threatened. One of the remaining Sonoma County California tiger salamander sites is currently occupied by cattle. Most owners of livestock seek to eliminate ground squirrel burrows because of the threat of cows (*Bos bos*) breaking their legs if they accidentally step into a burrow.

Mosquito Control

A commonly used method to control mosquitoes, used in Sonoma County (Marin/Sonoma Mosquito and Vector Control District, internet website 2002), is the application of methoprene, which increases the level of juvenile hormone in insect larvae and disrupts the molting process. Lawrenz (1984) found that methoprene (Altosid SR–10) retarded the development of selected crustacea that had the same molting hormones (i.e., juvenile hormone) as insects, and anticipated that the same hormone may control metamorphosis in other arthropods. Because the success of many aquatic vertebrates relies on an abundance of invertebrates in temporary wetlands, any delay in insect growth could reduce the numbers and density of prey available (Lawrenz 1984). The use of methoprene could have an indirect adverse effect on the California tiger salamander by reducing the availability of prey. In more recent studies, methoprene did not cause increased mortality of gray treefrog (*Hyla versicolor*) tadpoles (Sparling and Lowe 1998). However, it caused reduced survival rates and increased malformations in northern leopard frogs (*Rana pipiens*) (Ankley *et al.* 1998), and increased malformations in southern leopard frogs (*R. utricularia*) (Sparling 1998). Blumberg *et al.* (1998) correlated exposure to methoprene with delayed metamorphosis and high mortality rates in northern leopard and mink (*R. septentrionalis*) frogs. Methoprene appears to have both direct and indirect effects on the growth and survival of larval amphibians.

Introduced Species

Introduced species can have negative effects on California tiger salamander populations through competition and hybridization (Shaffer *et al.* 1993; H. Bradley Shaffer, UCD, *in litt.*, 1999). Competition from fish that prey on mosquito larvae and other invertebrates can reduce the survival of salamanders. Both California tiger salamanders (Stebbins 1962; J. D. Anderson 1968; Holomuzki 1986) and mosquito fish feed on micro- and macro-invertebrates; large numbers of mosquito fish may outcompete the salamander larvae for food (Graf 1993). As urban areas continue to expand, the introduction of mosquito fish into previously untreated ponds may result in the elimination of California tiger salamanders from additional breeding sites. The introduction of other fish either inadvertently or for recreational fishing or other purposes may also affect the prey base, reducing growth and survival rates of salamanders. They may also prey on tiger salamander larvae, reducing or eliminating populations (Shaffer *et al.* 1993).

The practice of importing the non-native tiger salamander for fish bait is no longer legal in California (CCR Title 14, Division 1, Subdivision 1, Chapter 2, Article 3, Section 4 2000). Non-native tiger salamanders have been documented in Sonoma County, although not in habitat utilized by California tiger salamanders (Shaffer *et al.* 1993). Non-native tiger salamanders were being sold as pets in a store directly across the street from one of the breeding sites (David Wooten, Service, pers. obs., 2002). If salamander population ranges overlap or come in contact through expansion, then hybridization may occur in closely related species and certain subspecies (Rudd 1955). Over time, a population of a subspecies could become genetically indistinguishable from a larger population of an introgressing subspecies such that the true genotype of the lesser subspecies no longer exists (Levin 2002). The Sonoma County California tiger salamander breeding sites in west Santa Rosa may be threatened by hybridization with non-native tiger salamanders because of the ability of the animals to disperse over upland areas, or through intentional introduction to the pools (Cook and Northern 2001).

Introduced salamanders may outcompete the California tiger salamander, or interbreed with the natives (Bury and Lukenbach 1976; Shaffer *et al.* 1993). Evidence suggests that the hybrids are viable, and that they breed with California tiger salamanders (H. Shaffer *in litt.,* 1999). With so few remaining breeding sites of California tiger salamanders in Sonoma County, the loss of any to hybridization, with or competition from, introduced species is of serious concern.

Grazing

Grazing in many cases has positive, or at least neutral, effects on the California tiger salamander (H. B. Shaffer and Peter Trenham, UCD, pers. comm., 1998; S. Sweet, pers. comm., 1998, 1999). By keeping vegetation shorter, grazing can make areas more suitable for ground squirrels, whose burrows are used by California tiger salamanders. Only one of the seven viable Sonoma County California tiger salamander breeding locations is currently being grazed. However, cattle drink large quantities of water, sometimes causing temporary pools to dry faster than they otherwise would (Sheri Melanson, Service, *in litt.,* 1993), and possibly causing breeding pools to dry too quickly for salamanders to be able to metamorphose (Feaver 1971). Melanson (1993) noted that although vernal pool species continued to reproduce under a November-to-April grazing regime, California tiger salamanders were either absent or found in low numbers in portions of pools that were heavily trampled by cattle. Continued trampling of a pond's edge by cattle can increase the surface area of a pond, and may increase water temperature and speed up the rate of evaporation and thus reduce the amount of time the pond contains enough water (S. Sweet, pers. comm., 1998).

Reduction in water quality caused by cattle excrement may negatively affect the California tiger salamanders by increasing nitrogen levels. High nitrogen levels have been associated with blooms of bacteria (Worthylake and Hovingh 1989), and silt has been associated with fatal fungal infections (Lefcort *et al.* 1997) (see Factor C of this section). However, grazing generally is compatible with the continued use of rangelands by the California tiger salamander as long as intensive burrowing rodent control programs are not implemented on such areas, and grazing is not excessive (Thomas Jones, University of Michigan, *in litt.,* 1993; Shaffer *et al.* 1993; S. Sweet, pers. comm., 1998, 1999).

Population Size

The low numbers of Sonoma County California tiger salamander make it vulnerable to risks associated with small, restricted populations. The elements of risk that are amplified in very small populations include: (1) The impact of high death rates or low birth rates; (2) the effects of genetic drift (random fluctuations in gene frequencies) and inbreeding (mating among close relatives); and (3) deterioration in environmental quality (Gilpin and Soule 1986). Genetic drift and inbreeding may lead to reductions in the ability of individuals to survive and reproduce (i.e., reductions in fitness) in small populations. In addition, reduced genetic variation in small populations may make any species less able to successfully adapt to future environmental changes (Shaffer 1981, 1987; Noss and Cooperrider 1994; Primack 1998).

**Reason for Emergency Determination**

Under section 4(b)(7) of the Act, and regulations at 50 CFR 424.20, we must consider development of an emergency rule to list a species if the threats to the species constitute an emergency posing a significant risk to its continuing survival. Such an emergency listing

becomes effective upon publication in the **Federal Register** and expires 240 days following publication in the **Federal Register** unless, during this 240-day period, we list the species following the normal listing procedures. We discuss the reasons why emergency listing the Sonoma County California tiger salamander as endangered is necessary below. In accordance with the Act, we will withdraw this emergency rule if, at any time after its publication, we determine that substantial evidence does not exist to warrant such a rule.

In making this determination, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Sonoma County California tiger salamander. As discussed in the Summary of Factors Affecting the Species, the species faces a number of threats. These include habitat destruction, degradation, and fragmentation, collection, invasive exotic species, pesticides, and inadequate regulatory mechanisms. The Sonoma County California tiger salamander also is vulnerable to chance environmental or demographic events, to which small populations are particularly vulnerable. The combination of only seven known breeding sites, small range on the Santa Rosa Plain, and restricted habitat makes the animal highly susceptible to random events, such as drought, disease, and other occurrences.

Drought conditions in the last two years have resulting in many of these ponds drying up earlier in the season than expected. Only three pools were wet long enough to allow for recruitment in 2001. Any extended drought could result in such low numbers of individuals that recovery would be precluded.

Because the Sonoma County California tiger salamander has been reduced to only seven known breeding sites, and all of them are subject to various immediate, ongoing, and future threats as outlined above, we find that the Sonoma County California tiger salamander is in imminent danger of extinction throughout all or a significant portion of its range and warrants immediate protection under the Act. Emergency listing the Sonoma County California tiger salamander as endangered will increase the regulatory protections and resources available to the species.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as the—(i) Specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary of the Interior (Secretary) designate critical habitat at the time the species is determined to be endangered or threatened. Our implementing regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform the required analysis of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to allow identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if she determines that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species. In the absence of a finding that critical habitat would increase threats to a species, if any benefits would derive from critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits.

The primary regulatory effect of critical habitat is the section 7 requirement that agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also produce some educational or informational benefits. Therefore, designation of critical habitat for the Sonoma County California tiger salamander is prudent.

However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Not designating critical habitat at this time allows us to provide the necessary protections needed for the conservation of the species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. The legislative history of the 1982 Act amendments also emphasized this point: ''The Committee feels strongly, however, that, where biology relating to the status of the species is clear, it should not be denied the protection of the Act because of the inability of the Secretary to complete the work necessary to designate critical habitat. * * * The committee expects the agencies to make the strongest attempt possible to determine critical habitat within the time period designated for listing, but stresses that the listing of species is not to be delayed in any instance past the time period allocated for such listing if the biological data is clear but the habitat designation process is not complete'' (H.R. Rep. No. 97–567 at 20 (1982)). We will prepare a critical habitat designation in the future when our available resources allow.

We will protect the Sonoma County California tiger salamander and its habitat through section 7 consultations to determine whether Federal actions are likely to jeopardize the continued existence of the subspecies, through the recovery process, through enforcement of take prohibitions under section 9 of the Act, and through the section 10 process for activities on non-Federal lands with no Federal nexus.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation actions by Federal, State, and local agencies. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for listed species. We discuss the protection of Federal agencies, considerations for

protection and conservation actions, and the prohibitions against taking and harm for the Sonoma County California tiger salamander, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed to be listed or is listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Federal agencies are required to confer with us informally on any action that is likely to jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Federal agency actions that may affect the Sonoma County California tiger salamanders and may require consultation with us include, but are not limited to, those within the jurisdiction of the Corps, Natural Resources Conservation Service, Federal Farm Bureau, and Federal Highway Administration (FHA).

We believe that protection and recovery of the Sonoma County California tiger salamander will require reduction of the threats from destruction and degradation of wetland and associated upland habitats due to urban development, exotic predators, unnecessary ground squirrel and gopher control, and road construction. Threats from collection and pesticide drift also must be reduced. These threats should be considered when management actions are taken in habitats currently and potentially occupied by the Sonoma County California tiger salamander, and areas deemed important for dispersal and connectivity or corridors between known locations of this species. Monitoring also should be undertaken for any management actions or scientific investigations designed to address these threats or their impacts.

Listing the Sonoma County California tiger salamander provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and regional agency efforts for the conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It also will describe the site-specific actions necessary to achieve conservation and survival of the species.

Listing also will require us to review any actions that may affect the Sonoma County California tiger salamander for lands and activities under Federal jurisdiction, State plans developed pursuant to section 6 of the Act, scientific investigations of efforts to enhance the propagation or survival of the animal, pursuant to section 10(a)(1)(A) of the Act, and habitat conservation plans prepared for non-Federal lands and activities pursuant to section 10(a)(1)(B) of the Act.

Federal agencies with management responsibility for the Sonoma County California tiger salamander include the Service, in relation to the issuance of section 10(a)(1)(A and B) permits for habitat conservation plans and other programs. Occurrences of this species could potentially be affected by projects requiring a permit from the Corps under section 404 of the CWA. The Corps is required to consult with us on applications they receive for projects that may affect listed species. Highway construction and maintenance projects that receive funding from the FHA would be subject to review under section 7 of the Act. In addition, activities that are authorized, funded, or administered by Federal agencies on non-Federal lands will be subject to section 7 review.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, codified at 50 CFR 17.21, in part make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import, export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. We believe that, based on the best available information, the following actions are not likely to result in a violation of section 9, provided these actions are carried out in accordance with any existing regulations and permit requirements:

(1) Possession, delivery, including interstate transport and import or export from the United States, involving no commercial activity, of Sonoma County California tiger salamanders that were collected prior to the date of publication of this emergency listing rule in the **Federal Register**;

(2) Any actions that may affect the Sonoma County California tiger salamander that are authorized, funded, or carried out by a Federal agency, when the action is conducted in accordance with the consultation requirements for listed species pursuant to section 7 of the Act;

(3) Any action taken for scientific research carried out under a recovery permit issued by the Service pursuant to section 10(a)(1)(A) of the Act; and

(4) Land actions or management carried out under a habitat conservation plan approved by the Service pursuant to section 10(a)(1)(B) of the Act, or an approved conservation agreement.

Activities that we believe could potentially result in a violation of section 9 of the Act include, but are not limited to:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including intrastate, interstate, and foreign commerce, or harming, or attempting any of these actions, of Sonoma County California tiger salamanders. Research activities where salamanders are trapped or captured will require a permit under section 10(a)(1)(A) of the Act;

(2) Activities authorized, funded, or carried out by Federal agencies that may affect the Sonoma County California tiger salamander, or its habitat, when such activities are not conducted in accordance with the consultation for listed species under section 7 of the Act;

(3) Discharges or dumping of toxic chemicals, silt, or other pollutants into, or other alteration of the quality of waters supporting Sonoma County California tiger salamanders that results in death or injury of the species or that results in degradation of their occupied habitat;

(4) Release of exotic species (including, but not limited to, bullfrogs, tiger salamanders, mosquito fish, bass, sunfish, bullhead, catfish, crayfish) into Sonoma County California tiger salamander breeding habitat;

(5) Destruction or alteration of uplands associated with seasonal pools used by Sonoma County California tiger salamanders during estivation and dispersal, or modification of migration routes such that migration and dispersal are reduced or precluded; and

(6) Activities (e.g., habitat conversion, excessive livestock grazing, road and trail construction, recreation, development, and unauthorized application of herbicides and pesticides in violation of label restrictions) that directly or indirectly result in the death or injury of larvae, sub-adult, or adult Sonoma County California tiger salamanders, or modify Sonoma County California tiger salamander habitat and significantly affect their essential behavioral patterns including breeding, foraging, sheltering, or other life functions. Otherwise lawful activities that incidentally take Sonoma County California tiger salamanders, but have no Federal nexus, will require a permit under section 10(a)(1)(B) of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–2063; facsimile 503/231–6243).

**National Environmental Policy Act**

We have determined that an Environmental Assessment and 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 as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Paperwork Reduction Act**

This rule does not contain any new collections of information other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned control number 1018–0094, which is valid through July 31, 2004. This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number.

**Executive Order 13211**

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**References Cited**

A complete list of all references cited in this rulemaking is available upon request from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

**Authors**

The primary author of this rule is David Wooten, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

**Regulation Promulgation**

For the reasons given in the preamble, we 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. Amend § 17.11(h) by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

**§ 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 | | | | | | |
| * | * | * | * | * | * | * | |
| AMPHIBIANS | | | | | | | |
| * | * | * | * | * | * | * | |
| Salamander, California tiger. | *Ambystoma californiense*. | U.S.A. (CA) ..... | U.S.A. (CA–Sonoma County). | E | 729 | NA | NA |
| * | * | * | * | * | * | * | |

Dated: July 16, 2002.

**Marshall P. Jones,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 02–18456 Filed 7–19–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 011218304–1304–01; I.D. 071702A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2002 total allowable catch (TAC) of northern rockfish in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 17, 2002, through 2400 hrs, A.l.t., December 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC of northern rockfish for the Western Regulatory Area was established as 600 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 TAC for northern rockfish in the Western Regulatory Area will be reached before the end of the fishing season or year. Therefore, the Regional Administrator is establishing a directed fishing allowance of 550 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 17, 2002.

**Virginia M. Fay,**

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

[FR Doc. 02–18440 Filed 7–17–02; 4:05 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 67, No. 140
Monday, July 22, 2002

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 956

**[Docket No. FV02–956–1 PR]**

### Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Establishment of Grade and Inspection Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on the establishment of grade and inspection requirements for Walla Walla sweet onions. This proposed rule was recommended by the Walla Walla Sweet Onion Marketing Committee (Committee), the agency responsible for local administration of the marketing order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. This rule would require that all Walla Walla sweet onions handled prior to June 10 of each marketing season be inspected and be at least U.S. Commercial grade. By establishing minimum standards early in the season, this rule is expected to improve producer returns by ensuring that early-season sweet onions are mature and marketable, while satisfying the consumer demand for consistently good quality produce. The cost of the required inspections would be fully funded by the Committee, and there would be no minimum quantity exemption from inspection prior to June 10 because the Committee would be funding the required inspections.

**DATES:** Comments must be received by September 20, 2002.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of Walla Walla sweet onions grown in Southeast Washington and Northeast Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule would establish grade and inspection requirements for Walla Walla sweet onions. Specifically, this rule would require that all Walla Walla sweet onions shipped prior to June 10 be inspected by the Federal-State Inspection Service (Inspection Service) and be at least U.S. Commercial grade. The proposed rule also provides that the Committee would enter into an agreement with the Inspection Service to fund the costs of the inspections required under this rule. And lastly, this rule would modify the minimum quantity inspection provision in § 956.64 by providing that the provision not apply for shipments made prior to June 10 of each marketing season.

Section 956.61 of the order provides authority for the Committee to recommend the establishment, modification, suspension or termination of handling regulations and § 956.62 provides authority for the issuance of grade and maturity regulations. Section 956.64 provides authority for the establishment and modification of minimum quantity exemptions. Section 956.70(f) provides for inspection during any period in which Walla Walla sweet onions are regulated, as well as providing that the Committee may enter into an agreement with the Inspection Service with respect to the cost and funding of inspection.

At a meeting held on February 12, 2002, the Committee passed a motion recommending to USDA that: (1) A regulation be established requiring that all onions shipped prior to June 10 be inspected and certified as being at least U.S. Commercial grade; (2) the cost of the required inspections be fully funded

by the Committee; (3) there be no minimum quantity exemption from inspection since the Committee would be funding the required inspections; and (4) the Committee be given the authority to administratively change the June 10 date to an earlier date. Seven members voted in favor of the motion, two in opposition and one member abstained. The members supporting the motion believe that the shipment of poor quality, immature onions early in the season result in low consumer acceptance, hurt repeat purchases, and have a price depressing effect on good quality onions. The three members not initially supporting grade and inspection requirements wanted additional time to evaluate the recommendation and were concerned about the potential cost of funding the inspections.

The Committee met again on February 20, 2002, to discuss ways of amending the recommendation to meet the concerns of those who did not support the initial recommendation. Individuals not in support of the original motion suggested that parameters be established to limit the number of inspections, or alternatively, that limits be placed on the total amount the Committee would be required to expend on inspections. They also expressed concern that not all handlers shipped poor quality and immature onions early in the season and that it was important that this problem not be viewed as an industry-wide problem.

There were seven Committee members in attendance at the February 20 meeting. All of those in attendance, which included two of the members opposed to the initial action, voted in favor of a motion recommending to USDA that: (1) A regulation be established requiring that all onions shipped prior to June 10 be inspected and certified as being at least U.S. Commercial grade; (2) the cost of the required inspections be fully funded by the Committee; (3) there be no minimum quantity exemption from inspection since the Committee would be funding the required inspections; and (4) the Committee be given the authority to administratively change the June 10 date to an earlier or later date. This recommendation was subsequently submitted to USDA. Following review of this proposal, USDA notified the Committee, that the recommendation to grant the Committee authority to administratively change the date when inspections would be required would not be proposed because such a change should be subject to rulemaking.

As a consequence, the Committee met once again on April 9, 2002, and with a quorum of seven of the ten members present, unanimously recommended that: (1) All Walla Walla sweet onions shipped prior to June 10 be inspected and certified as being at least U.S. Commercial grade; (2) the cost of the required inspections be fully funded by the Committee; and (3) there be no minimum quantity exemption from inspection since the Committee would fund the required inspections. This modified recommendation dropped the proposed provision containing authority for the Committee to administratively change the dates when inspections would be required. Further, Committee members determined that there was not a need to put a cap on the amount of money the Committee would fund for the cost of inspection. Onion shipments prior to June 10 are expected to be minimal with inspection costs being estimated to approximate $3,000. The Committee plans to provide in its budget $4,500 for the cost of inspection in case its shipment estimate is low. The Committee calculated that with an estimated inspection fee of $0.06 per 50-pound container on small lots, $4,500 would pay for the inspection of 75,000 50-pound containers of onions. Committee members believed that it was very unlikely that 75,000 50-pound containers of onions could be shipped prior to June 10.

The Walla Walla sweet onion harvesting and marketing season generally starts in mid-June and ends late in August, with shipments peaking in July. Depending upon cultural practices and weather, a few producers may start harvesting and marketing onions in early June. Also, depending upon whether the onions were planted in the autumn or the spring, harvest may extend past the end of August. There have also been some recent attempts at controlled atmosphere storage with sales reported as late as November.

The primary objective of this proposed rule is to prevent disorderly marketing conditions caused by the shipment of poor quality, immature Walla Walla sweet onions early in the season thereby improving producer returns, and providing the consumer with a quality product. A secondary objective is to help prevent onions from other production areas from being mislabeled and marketed as Walla Walla sweet onions.

According to the Committee, a few producers and handlers of Walla Walla sweet onions harvest and market poor quality, immature onions early in the season. Immature onions tend to break down prematurely, becoming soft and spongy. Buyers who have purchased poor quality, immature onions often delay or fail to make repeat purchases of additional Walla Walla sweet onions. Walla Walla sweet onions are non-storage, summer onions that should be harvested when mature and immediately marketed. If buyers refuse to purchase additional Walla Walla sweet onions, demand for such onions decreases. Buyer dissatisfaction and reduced repeat purchases have a price depressing effect on good quality onions. Shipment of poor quality, immature onions early in the marketing season can set a negative market tone for the entire season that results in depressed producer returns.

The rule would require all Walla Walla sweet onions handled prior to June 10 of each season to be inspected as discussed below. The Committee also recommended that there not be a minimum quantity exemption from inspection prior to June 10 since the Committee would be funding the cost of inspection and because small shipments of poor quality, immature onions can be damaging to the market for good quality onions. The Committee reports that early-season sales of immature onions in the past have been made by both large and small entities.

Under this proposed rule, the Inspection Service would inspect all Walla Walla sweet onions being shipped prior to June 10. The onions would have to, at least, meet the requirements of U.S. Commercial grade as defined in the U.S. Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Type), as amended (7 CFR 51.2830 through 51.2854.) Any lot of Walla Walla sweet onions meeting a minimum of U.S. Commercial grade would be issued an inspection certificate validating the shipment of such onions.

With regard to the early-season onions, the feature the Committee is most interested in under the U.S. Commercial grade designation is maturity. Under § 51.2841 of the U.S. Standards, ''mature'' is defined to mean ''well cured.'' Included in this definition is an exception for ''mid-season onions,'' a term used to describe onions that

''* * * are not customarily held in storage and are considered mature when harvested in accordance with good commercial practice at a stage which will not result in the onions becoming soft or spongy.'' Walla Walla sweet onions are considered a ''mid-season'' onion. The USDA's Shipping Point and Market Inspection Instructions for Onions further explains that ''mid-season onions'' are onions ''* * * harvested during the summer for

immediate shipment and consumption in only a fairly-well cured state.'' These definitions and instructions are designed to provide the Inspection Service with the ability to more accurately grade the various summer, non-storage onions grown in the northern United States, including Walla Walla sweet onions.

The Committee also believes that this rule would help in the monitoring and prevention of any early season mislabeling and sale of onions grown outside the defined production area as Walla Walla sweet onions. The Committee reports that various roadside produce stands and Farmers' Markets located outside the production area have sold onions mislabeled as Walla Walla sweet onions that are not produced within the order's defined production area. The shipments of poor quality onions produced outside the production area that are misrepresented and mislabeled as Walla Walla sweet onions are price depressing for Walla Walla sweet onions. The Committee believes that requiring a valid inspection certificate on all lots of Walla Walla sweet onions being shipped prior to June 10 would enhance the Committee's compliance efforts in preventing this misrepresentation and mislabeling.

The Committee also expends funds to help educate consumers and retailers regarding Walla Walla sweet onions, including information about the marketing season and the current regulation (§ 956.162) that requires each container of Walla Walla sweet onions to be conspicuously marked with the Committee's trademarked logo.

The Committee believes that the establishment of mandatory early-season inspection and certification would help ensure that poor quality, immature onions are kept out of the market and that poor quality onions from other production areas are not misrepresented as Walla Walla sweet onions. With the establishment of this regulation, the Committee believes the marketing of Walla Walla sweet onions would be improved, producer returns would be increased, and consumer confidence would be maintained for the entire season.

This rule also includes a conforming change to § 956.163 Handling for specified purposes. Section 956.163 currently specifies that assessment and container-marking requirements specified in Part 956 shall not be applicable to shipments of onions for the purposes listed in § 956.163. Such purposes include shipments for relief or to charitable institutions, livestock feed, processing, seed, and other noncompetitive outlets. This conforming change would add handling requirements specified in this part to the requirements that do not apply to shipments of onions for purposes listed in § 956.163.

This proposed change would not impact the onion import regulation under section 8e of the Act. Section 8e provides that whenever two or more marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation into the United States of any such commodity shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the order which, as determined by the Secretary, regulates the commodity produced in the area with which the imported commodity is in most direct competition. It has been previously determined that onions imported during the period March 10 through June 4 of each year are in most direct competition with onions grown in designated counties in South Texas under Marketing Order No. 959 and that the imported onions must meet the grade, size, quality, and maturity requirements imposed under that order. During the period June 5 through March 9 of each marketing year, imported onions are in most direct competition with onions grown in designated counties in Idaho and Malheur County, Oregon, under Marketing Order No. 958, and imported onions must comply with the grade, size, quality, and maturity requirements imposed under that order.

**Initial Regulatory Flexibility Analysis**

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

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

There are approximately 37 producers of Walla Walla sweet onions and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

According to the Washington Agricultural Statistics Service, approximately 576,000 50-pound containers of Walla Walla sweet onions were produced for market in 2001 with an average F.O.B. value of $9.70 per 50-pound container. Thus, in 2001 the industry realized gross receipts of about $5,587,000 for the sale of fresh Walla Walla sweet onions, providing each of the 21 handlers, on average, gross annual receipts of about $266,000. Furthermore, based on the Committee's estimate of an average packing cost for Walla Walla sweet onions of $2.75 per 50-pound container, returns to producers would have been about $6.95 per 50-pound container, or just less than $110,000 on average. Based on the foregoing, it can be concluded that a majority of handlers and producers of Walla Walla sweet onions may be classified as small entities.

This rule would establish grade and inspection requirements for Walla Walla sweet onions. Specifically, this rule would require that all Walla Walla sweet onions handled prior to June 10 be U.S. Commercial grade, or better. This rule would also provide that the current minimum quantity exemption from inspection (2000 pounds per shipment) not apply to onion shipments prior to June 10 of each marketing season. This rule was unanimously recommended by the Committee at a meeting held in Walla Walla, Washington, on April 9, 2002, following discussions at meetings held on February 12 and 20, 2002. Authority for the proposed rule is contained in §§ 956.61, 956.62, 956.64, and 956.70 of the order.

The Committee discussed the impact this change could have on handlers and producers in terms of cost. This rule would have costs associated with it due to the cost of inspection. All handlers, both small and large, would be required to have all sweet onions that are shipped prior to June 10 inspected and certified. However, the Committee is concerned with the impact any regulation would have on the industry's small handlers and producers, and recommended that the Committee cover the cost of the inspections that would be required by this proposed rule. The Committee anticipates that the total annual cost of such a regulation would approximate $3,000. The funds designated for the early-season inspection costs would originate from assessment income and thus be spread out over the entire industry. Based on

the 576,000 50-pound containers of Walla Walla sweet onions produced in 2001, this could amount to about $0.0052 per 50-pound container of sweet onions handled during any given season. The Committee plans on incurring this additional cost without increasing the current $0.21 per 50-pound container assessment rate. The Committee believes that the costs associated with this proposed regulation would not be significant, and that the benefits would outweigh any costs. As noted earlier, poor quality Walla Walla sweet onions, particularly immature onions, shipped early in the marketing season are price depressing on the shipment of good quality onions and reduce producer returns.

The Committee discussed alternatives to this rule at all three of its meetings, including the establishment of various dates other than June 10, various methods of mitigating the impact of the rule on small handlers, and not establishing any regulation. The Committee explored the idea of establishing a date as early as June 1 and as late as June 15 as the date prior to which inspections would be required. During this discussion, it was thought that a date earlier than June 10 would not adequately prevent immature onions from being marketed. In addition, the Committee determined that a date later than June 10, although decreasing the chance that immature onions would be marketed, could be too expensive for the Committee to fund. The Committee decided that June 10 was the best date based on the historical start of the Walla Walla sweet onion season.

The Committee considered that each handler pay directly for the cost of inspection, but believed that funding through assessments would be preferable. Consideration was given to the impact on small handlers. The Committee was of the view that funding through assessments would be better in terms of any negative impact on small handlers. Other options were considered including limiting each handler to two inspections a day and establishing an inspection cost ceiling for each handler that, once met, would require the handler to pay for any additional inspections prior to June 10. However, funding through assessments was considered the most reasonable and practical method to fund the inspection requirements proposed herein.

The Committee also discussed how it could annually meet and modify the date prior to which inspections would be required. The Committee included in its initial recommendation a provision that would allow it to administratively modify the date, as established in the rule, to a date earlier in the season. At the request of a producer, this provision was modified by the Committee at the February 20 meeting to include provision that the Committee be able to administratively modify the date to either an earlier date or a later date than that established by the rule. Under this alternative, the Committee would meet annually and take action, if appropriate, to modify this date administratively, without utilizing the rulemaking process. USDA reviewed the recommendation and notified the Committee that the recommendation to grant the Committee authority to administratively change the date when inspections would be required would not be proposed because such a change should be subject to rulemaking.

Finally, the Committee discussed and rejected the idea of not establishing any early-season inspection requirement because it strongly believes that some type of action is needed to help create orderly marketing and improve producer returns.

This rule would establish grade and inspection requirements for Walla Walla sweet onions handled prior to June 10. Although inspection certificates would be issued by the Inspection Service, this action would not impose any additional reporting or recordkeeping requirements on either small or large sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, as previously mentioned, Walla Walla sweet onions would have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 CFR 1621 *et seq*).

In addition, the Committee's meetings were widely publicized throughout the Walla Walla sweet onion industry and all interested persons were invited to attend and participate in Committee deliberations on all issues. Like all Committee meetings, the Committee meetings on February 12, February 20, and April 9, 2002, were public meetings and all entities, both large and small, were able to express views on this issue. In addition, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 60-day comment period is provided to allow interested persons the opportunity to respond to this proposal, including any regulatory and informational impacts of this action on small businesses. All written comments timely received will be considered before a final determination is made on this matter.

**List of Subjects in 7 CFR Part 956**

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 956 is proposed to be amended as follows:

## PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 956.163(a) is amended by revising the introductory text of paragraph (a) to read as follows:

### § 956.163 Handling for specified purposes.

(a) Assessment, container marking, and handling regulations specified in this part shall not be applicable to shipments of onions for any of the following purposes:

* * * * *

3. A new subpart—Handling Regulations—consisting of § 956.362 is added to read as follows:

## Subpart—Handling Regulations

### § 956.362 Handling Regulation.

No person shall handle any quantity of Walla Walla Sweet Onions prior to June 10 of each marketing season unless such onions are handled in accordance with paragraphs (a) and (b) of this section, or unless such onions are handled in accordance with § 956.163.

(a) *Grade requirement.* U.S. Commercial grade or better.

(b) *Inspection.* No handler shall handle any onions unless such onions are inspected by the Federal-State Inspection Service and are covered by a valid inspection certificate. The minimum quantity exemption provision in § 956.64 of this part shall not apply to any quantity of Walla Walla sweet onions shipped prior to June 10 of each marketing season. The Committee shall enter into an agreement pursuant to

§ 956.70(f) with the Federal-State Inspection Service in which the Committee agrees to fund all required inspections prior to June 10 of each marketing year.

(c) *Definitions.* The term ''U.S. Commercial'' shall have the same meaning as when used in the United States Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Type), as amended (7 CFR 51.2830 through 51.2854) including the tolerances set forth therein.

Dated: July 15, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–18256 Filed 7–19–02; 8:45 am]

**BILLING CODE 3410–02–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**RIN 3150–AG93**

### Geological and Seismological Characteristics for Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its licensing requirements for dry cask modes of storage of spent nuclear fuel, high-level radioactive waste, and power reactor-related Greater than Class C waste in an independent spent fuel storage installation (ISFSI) or in a U.S. Department of Energy (DOE) monitored retrievable storage installation (MRS). These amendments would update the seismic siting and design criteria, including geologic, seismic, and earthquake engineering considerations. The proposed rule would allow NRC and its licensees to benefit from experience gained in the licensing of existing facilities and to incorporate the rapid advancements in the earth sciences and earthquake engineering. The proposed amendments would make the Part 72 regulations compatible with the 1996 revision to Part 100 that addressed uncertainties in seismic hazard analysis, and commensurate with the risk associated with an ISFSI or MRS.

**DATES:** The comment period expires October 7, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide electronic comments via the NRC's interactive rulemaking website at (*http://ruleforum.llnl.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher at (301) 415–5905, or e-mail cag@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room (PDR), Room O–1F21, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Keith K. McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–5252, e-mail: *kkm@nrc.gov.*

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## I. Background

In 1980, the Commission added 10 CFR part 72 to its regulations to establish licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste (HLW) (45 FR 74693; November 12, 1980). In 1988, the Commission amended part 72 to provide for licensing the storage of spent nuclear fuel and HLW in an MRS (53 FR 31651, August 19, 1988). Subpart E of part 72 contains siting evaluation factors that must be investigated and assessed with respect to the siting of an ISFSI or MRS, including a requirement for evaluation of geological and seismological characteristics. ISFSI and MRS facilities are designed and constructed for the interim storage of spent nuclear fuel that has aged for at least one year, and other solidified high-level radioactive materials that are pending shipment to a high-level radioactive waste repository or other disposal.

The original regulations envisioned ISFSI and MRS facilities as spent fuel pools or single, massive dry storage structures. The regulations required seismic evaluations equivalent to those for a nuclear power plant (NPP) when the ISFSI or MRS is located west of the Rocky Mountain Front (west of approximately 104° west longitude), referred to hereafter as western U.S., or in areas of known seismic activity east of the Rocky Mountain Front (east of approximately 104° west longitude), referred to hereafter as eastern U.S. A seismic design requirement, equivalent to the requirements for a NPP (appendix A to part 100) seemed appropriate for these types of facilities, given the potential accident scenarios. For those sites located in eastern U.S., and not in areas of known seismic activity, the regulations allowed for less stringent alternatives.

For other types of ISFSI or MRS designs, the regulation required a site-specific investigation to establish site suitability commensurate with the specific requirements of the proposed ISFSI or MRS. The Commission explained that for ISFSIs that do not involve massive structures, such as dry storage casks and canisters, the required design earthquake ground motion (DE) will be determined on a case-by-case basis until more experience is gained with the licensing of these types of units (45 FR 74697).

For sites located in either the western U.S. or in areas of known seismic activity in the eastern U.S., the regulations in 10 CFR part 72 currently require the use of the procedures in appendix A to part 100 for determining

the design basis vibratory ground motion at a site. Appendix A requires the use of ''deterministic'' approaches in the development of a single set of earthquake sources. The applicant develops for each source a postulated earthquake to be used to determine the ground motion that can affect the site, locates the postulated earthquake according to prescribed rules, and then calculates ground motions at the site.

Advances in the sciences of seismology and geology, along with the occurrence of some licensing issues not foreseen in the development of appendix A to part 100, have caused a number of difficulties in the application of this regulation to ISFSIs. Specific problematic areas include the following:

1. Because the deterministic approach does not explicitly recognize uncertainties in geoscience parameters, probabilistic seismic hazard analysis (PSHA) methods were developed that allow explicit expressions for the uncertainty in ground motion estimates and provide a means for assessing sensitivity to various parameters. Yet appendix A to part 100 does not allow this application.

2. The limitations in data and geologic and seismic analyses and the rapid accumulation of knowledge in the geosciences have required considerable latitude in judgment. The inclusion of detailed geoscience assessments in appendix A has caused difficulties for applicants and the NRC staff by inhibiting the use of needed judgment and flexibility in applying basic principles to new situations; and

3. Various sections of appendix A are subject to different interpretations. For example, there have been differences of opinion and differing interpretations among experts as to the largest earthquakes to be considered and ground motion models to be used, thus often making the licensing process less predictable.

In 1996, the Commission amended 10 CFR parts 50 and 100 to update the criteria used in decisions regarding NPP siting, including geologic and seismic engineering considerations for future NPPs (61 FR 65157; December 11, 1996). The amendments added a new § 100.23 requiring that the uncertainties associated with the determination of the safe shutdown earthquake ground motion (SSE) be addressed through an appropriate analysis, such as a PSHA or suitable sensitivity analyses in lieu of appendix A to part 100. This approach takes into account the problematic areas identified above in the earlier siting requirements and is based on developments in the field over the past two decades. Further, regulatory guides have been used to address implementation issues. For example, the Commission provided guidance for NPP license applicants in Regulatory Guide 1.165, ''Identification and Characterization of Seismic Sources and Determination of Safe Shutdown Earthquake Ground Motion,'' and Standard Review Plan NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Reactors,'' Section 2.5.2, ''Vibratory Ground Motion,'' Revision 3. However, the Commission left appendix A to part 100 in place to preserve the licensing basis for existing plants and confined the applicability of § 100.23 to new NPPs.

With over 10 years of experience licensing dry cask storage (10 specific licenses have been issued), the Commission is now proposing a conforming change to 10 CFR part 72 to require applicants, at some locations, to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, for determining the DE. The use of a probabilistic approach or suitable sensitivity analyses to siting parallels the change made to 10 CFR part 100.

In comparison with a NPP, an operating dry cask ISFSI or MRS facility, storing spent nuclear fuel, is a passive facility in which the primary activities are waste receipt, handling, and storage. An ISFSI or MRS facility does not have the variety and complexity of active systems necessary to support safe operations at a NPP. Further, the robust cask design required for non-seismic considerations (e.g., drop event, shielding), assure low probabilities of failure from seismic events. In the unlikely occurrence of a radiological release as a result of a seismic event, the radiological consequences to workers and the public are significantly lower than those that could arise at a NPP. This is because the conditions required for release and dispersal of significant quantities of radioactive material, such as high temperatures or pressures, are not present in an ISFSI or MRS. This is primarily due to the low heat-generation rate of spent fuel that has undergone more than one year of decay before storage in an ISFSI or MRS, and to the low inventory of volatile radioactive materials readily available for release to the environment. The long-lived nuclides present in spent fuel are tightly bound in the fuel materials and are not readily dispersible. Short-lived volatile nuclides, such as I–131, are no longer present in aged spent fuel. Furthermore, even if the short-lived nuclides were present during a fuel assembly rupture, the canister surrounding the fuel assemblies is designed to confine these nuclides. Hence, the Commission believes that the seismically induced risk from the operation of an ISFSI or MRS is less than at an operating NPP. Therefore, the Commission proposes to revise the DE requirements for ISFSI and MRS facilities from the current part 72 requirements, which are equivalent to the SSE for a NPP.

## II. Objectives

An ISFSI is designed, constructed, and operated under a part 72 specific or general license. A part 72 specific license for an ISFSI is issued to a named person upon application filed under part 72 regulations. A part 72 general license for an ISFSI is issued under 10 CFR 72.210 to persons authorized to possess a NPP license under part 50, without filing a part 72 license application. A general licensee is required to meet the conditions specified in Subpart K of part 72. An MRS may be designed, constructed, and operated by DOE under a part 72 specific license.

The proposed rule reflects changes that are intended to (1) benefit from the experience gained in applying the existing regulation and from research; and (2) provide needed regulatory flexibility to incorporate into licensing under part 72, state-of-the-art improvements in the geosciences and earthquake engineering.

The objectives of this proposed rule are to:

1. Require a new specific license applicant for a dry cask storage facility located in either the western U.S. or in areas of known seismic activity in the eastern U.S., and not co-located with a NPP, to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, for determining the DE. All other new specific license applicants for dry cask storage facilities would have the option of complying with the proposed requirement to use a PSHA or suitable sensitivity analyses to address uncertainties in seismic hazard analysis, or other options compatible with the existing regulation. (§ 72.103)

2. Allow new ISFSI or MRS applicants to use a DE appropriate for and commensurate with the risk associated with an ISFSI or MRS (§ 72.103); and

3. Require general licensees to evaluate that the designs of cask storage pads and areas adequately account for dynamic loads, in addition to static loads. (§ 72.212)

## III. Applicability

This section clarifies the applicability of the proposed new § 72.103 for part 72 specific licensees, and modified § 72.212(b)(2)(i)(B) for part 72 general licensees.

*Applicability of Proposed § 72.103*

(1) Applicants who apply on or after the effective date of the final rule, for a part 72 specific license for a dry cask storage ISFSI or MRS, located in either the western U.S. or in areas of known seismic activity in the eastern U.S., and not co-located with a NPP, would be required to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, for determining the DE.

(2) Applicants who apply on or after the effective date of the final rule, for a part 72 specific license for a dry cask storage ISFSI or MRS, located in either the western U.S. or in areas of known seismic activity in the eastern U.S., and co-located with a NPP, would have the option of addressing uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, or using the existing design criteria for the NPP, for determining the DE. When the existing design criteria for the NPP are used for an ISFSI at a site with multiple NPPs, the criteria for the most recent NPP must be used.

(3) Applicants who apply on or after the effective date of the final rule, for a part 72 specific license for a dry cask storage ISFSI or MRS, located in the eastern U.S., except in areas of known seismic activity, would have the option of addressing uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, or using the standardized DE described by an appropriate response spectrum anchored at 0.25 g (subject to the conditions in proposed § 72.103(a)(1)), or using the existing design criteria for the most recent NPP (if applicable), for determining the DE.

(4) The proposed § 72.103 is not applicable to a general licensee at an existing NPP operating an ISFSI under a part 72 general license anywhere in the U.S.

The proposed changes apply to the design basis of both a dry cask storage type ISFSI and MRS, because these facilities are similar in design. The Commission does not intend to revise the 10 CFR part 72 geological and seismological criteria as they apply to wet modes of storage because applications for this means of storage are not expected and it is not cost-effective to allocate resources to develop the technical bases for such an expansion of the rulemaking. The Commission also does not intend to revise the 10 CFR part 72 geological and seismological criteria as they apply to dry modes of storage that do not use casks because of the lack of experience in licensing these facilities.

*Applicability of Modified § 72.212(b)(2)(i)(B)*

The proposed changes in § 72.212(b)(2)(i)(B) regarding the evaluation of dynamic loads for the design of cask storage pads and areas would apply to all general licensees for an ISFSI.

The applicability of the proposed § 72.103 and modified § 72.212(b)(2)(i)(B) is summarized in the table below.

SUMMARY OF APPLICABILITY

[Design Earthquake Ground Motion for ISFSI or MRS Specific License Applicants for Dry Cask Modes of Storage on or after the Effective Date of the Final Rule.]

| Site condition | Specific license [1] |
|---|---|
| Western U.S., or areas of known seismic activity in the eastern U.S., not co-located with NPP. | Must use PSHA or suitable sensitivity analyses to account for uncertainties in seismic hazards evaluations.[2] |
| Western U.S., or areas of known seismic activity in the eastern U.S., and co-located with NPP. | PSHA or suitable sensitivity analyses to account for uncertainties in seismic hazards evaluations,[2] or<br>existing NPP design criteria (multi-unit sites—use the most recent criteria). |
| Eastern U.S., and not in areas of known seismic activity ..... | PSHA or suitable sensitivity analyses to account for uncertainties in seismic hazards evaluations,[2] or<br>existing NPP design criteria, if applicable (multi-unit activity sites—use the most recent criteria), or<br>an appropriate response spectrum anchored at 0.25g (subject to the conditions in proposed § 72.103(a)(1)). |

[1] Proposed § 72.103 does not apply to general licensees. General licensees must satisfy the conditions given in 10 CFR 72.212.

[2] Regardless of the results of the investigations, anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

## IV. Discussion

The Commission is proposing to amend certain sections of part 72 dealing with seismic siting and design criteria for a dry cask ISFSI or MRS. The Commission intends to leave the present § 72.102 in place to preserve the ISFSI licensing bases for applications before the effective date of the rule, and continue the present ISFSI or MRS licensing bases for applications for other than dry cask modes of storage. The Commission is proposing to change the heading of § 72.102, add a new § 72.103, and modify § 72.212(b)(2)(i)(B).

*A. Proposed Change to 10 CFR 72.102*

The heading of § 72.102 would be changed to clarify that the present requirements are applicable to ISFSI or MRS licensees or license applicants before the effective date of the rule. The requirements of § 72.102 that applied to ISFSI or MRS licensees or license applicants for other than dry cask modes of storage would continue to apply.

*B. Proposed 10 CFR 72.103*

Proposed § 72.103 describes the seismic requirements for new specific license applicants for dry cask storage at an ISFSI or MRS.

1. Remove Detailed Guidance From the Regulation

Part 72 currently requires license applicants for an ISFSI or MRS, in the western U.S. or in other areas of know seismicity, to comply with appendix A to part 100. Appendix A contains both requirements and guidance on how to satisfy those requirements. For example, Section IV, ''Required Investigations,'' of appendix A states that investigations are required for vibratory ground

motion, surface faulting, and seismically induced floods and water waves. Appendix A then provides detailed guidance on what constitutes an acceptable investigation. A similar situation exists in Section V, ''Seismic and Geologic Design Bases,'' of appendix A to part 100.

Geoscience assessments require considerable latitude in judgment because of (a) limitations in data; (b) current state-of-the-art of geologic and seismic analyses; (c) rapid accumulation of knowledge; and (d) evolution in geoscience concepts. The Commission recognized the need for latitude in judgment when it amended part 100 in 1996.

However, specifying geoscience assessments in detail in a regulation has created difficulty for applicants and the NRC staff by inhibiting needed latitude in judgment. It has inhibited the flexibility needed in applying basic principles to new situations and the use of evolving methods of analyses (for instance, probabilistic) in the licensing process.

The Commission proposes to add a new section in part 72 that would provide specific siting requirements for an ISFSI or MRS instead of referencing another part of the regulations (appendix A to part 100). The proposed regulation would also reduce the level of detail by placing only basic requirements in the rule and providing the details on methods acceptable for meeting the requirements in an accompanying guidance document. Thus, the proposed regulation contains requirements to:

(i) Determine the geological, seismological, and engineering characteristics of the proposed site;

(ii) Establish a DE; and

(iii) Identify the uncertainties associated with these requirements. Detailed guidance on the procedures acceptable to the NRC for meeting the requirements would be provided in a draft regulatory guide being issued for public comment as DG–3021, ''Site Evaluations and Determination of Design Earthquake Ground Motion for Seismic Design of Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations.''

2. Address Uncertainties and Use Probabilistic Methods

The existing approach for determining a DE for an ISFSI or MRS, embodied in appendix A to part 100, relies on a ''deterministic'' approach. Using this deterministic approach, an applicant develops a single set of earthquake sources, develops for each source a postulated earthquake to be used as the source of ground motion that can affect the site, locates the postulated earthquake according to prescribed rules, and then calculates ground motions at the site.

Although this approach has worked reasonably well for the past several decades in the sense that SSE for NPPs sited with this approach are judged to be suitably conservative, the approach has not explicitly recognized uncertainties in geosciences parameters. Because so little is known about earthquake phenomena (especially in the eastern U.S.), there have often been differences of opinion and differing interpretations among experts as to the largest earthquakes to be considered and ground-motion models to be used, often making the licensing process less predictable.

Probabilistic methods that have been developed in the past 15 to 20 years for evaluation of seismic safety of nuclear facilities allow explicit incorporation of different models for zonation, earthquake size, ground motion, and other parameters. The advantage of using these probabilistic methods is their ability to incorporate different models and data sets, thereby providing an explicit expression for the uncertainty in the ground motion estimates and a means of assessing sensitivity to various input parameters. The western and eastern U.S. have fundamentally different tectonic environments and histories of tectonic deformation. Consequently, application of these probabilistic methodologies has revealed the need to vary the fundamental PSHA methodology depending on the tectonic environment of the site.

In 1996, when the Commission accepted the use of a PSHA methodology or suitable sensitivity analyses in § 100.23, it recognized that the uncertainties in seismological and geological information must be formally evaluated and appropriately accommodated in the determination of the SSE for seismic design of NPPs. The Commission further recognized that the nature of uncertainty and the appropriate approach to account for it depends on the tectonic environment of the site and on properly characterizing parameters input to the PSHA or suitable sensitivity analyses. Consequently, methods other than probabilistic methods, such as sensitivity analyses, may be adequate for some sites to account for uncertainties. The Commission believes that certain new applicants for ISFSI or MRS licenses, as described in Section III, ''Applicability,'' above, must use probabilistic methods or other sensitivity analyses to account for these uncertainties instead of using the appendix A to part 100. The Commission does not intend to require new ISFSI or MRS applicants that are co-located with a NPP to address uncertainties because the criteria used to evaluate existing NPPs are considered to be adequate for ISFSIs, in that the criteria have been determined to be safe for NPP licensing, and the seismically induced risk of an ISFSI or MRS is significantly lower than that of a NPP, as described in Section IV.

The key elements of the Commission's proposed approach for seismic and geologic siting for ISFSI or MRS license review and approval consists of:

a. Conducting site-specific and regional geoscience investigations;

b. Setting the target exceedance probability commensurate with the level of risk associated with an ISFSI or MRS;

c. Conducting PSHA and determining ground motion level corresponding to the target exceedance probability;

d. Determining if other sources of information change the available probabilistic results or data for the site; and

e. Determining site-specific spectral shape, and scaling this shape to the ground motion level determined above.

In addition, the NRC staff will review the application using all available data including insights and information from previous licensing experience. Thus, the proposed approach requires thorough regional and site-specific geoscience investigations. Results of the regional and site-specific investigations must be considered in applying the probabilistic method. Two current probabilistic methods are the NRC-sponsored study conducted by Lawrence Livermore National Laboratory and the Electric Power Research Institute's seismic hazard study. These are essentially regional studies. The regional and site-specific investigations provide detailed information to update the database of the hazard methodology to make the probabilistic analysis site-specific.

Applicants must also incorporate local site geological factors, such as stratigraphy and topography, and account for site-specific geotechnical properties in establishing the DE. Guidelines to incorporate local site factors and advances in ground motion attenuation models, and to determine ground motion estimates, are outlined in NUREG–0800, Section 2.5.2.

Methods acceptable to the NRC for implementing the proposed regulation related to the PSHA or suitable sensitivity analyses are described in DG–3021.

3. Revise the Design Earthquake Ground Motion

The present DE is based on the requirements contained in 10 CFR part 100 for NPPs. In the Statement of Considerations accompanying the initial part 72 rulemaking, the Commission recognized that the design peak horizontal acceleration for structures, systems, and components (SSCs) need not be as high as for a NPP and should be determined on a ''case-by-case'' basis until ''more experience is gained with licensing of these types of units'' (45 FR 74697; November 12, 1980). With over 10 years of experience in licensing dry cask storage and with analyses demonstrating robust behavior of dry cask storage systems (DCSSs) in accident scenarios (10 specific licenses have been issued and 9 locations use the general license provisions), the Commission now has a reasonable basis to consider lower and more appropriate DE parameters for a dry cask ISFSI or MRS. Therefore, the Commission proposes to reduce the DE for new ISFSI or MRS license applicants to be commensurate with the lower risk associated with these facilities.

I. Factors that result in the lower radiological risk at an ISFSI or MRS compared to a NPP include the following:

a. In comparison with a NPP, an operating ISFSI or MRS is a passive facility in which the primary activities are waste receipt, handling, and storage. An ISFSI or MRS does not have the variety and complexity of active systems necessary to support an operating NPP. After the spent fuel is in place, an ISFSI or MRS is essentially a static operation.

b. During normal operations, the conditions required for the release and dispersal of significant quantities of radioactive materials are not present. There are no high temperatures or pressures present during normal operations or under design basis accident conditions to cause the release and dispersal of radioactive materials. This is primarily due to the low heat-generation rate of spent fuel that has undergone more than one year of decay before storage in an ISFSI or MRS, and to the low inventory of volatile radioactive materials readily available for release to the environment.

c. The long-lived nuclides present in spent fuel are tightly bound in the fuel materials and are not readily dispersible. Short-lived volatile nuclides, such as I–131, are no longer present in aged spent fuel. Furthermore, even if the short-lived nuclides were present during a fuel assembly rupture, the canister surrounding the fuel assemblies would confine these nuclides. Therefore, the Commission believes that the seismically induced radiological risk associated with an ISFSI or MRS is significantly less than the risk associated with a NPP. Also, the Commission has stated that the use of risk-informed regulation is appropriate.

d. The critical element for protection against radiation release is the sealed cask containing the spent fuel assemblies. The standards in part 72 subparts E ''Siting Evaluation Factors,'' and F ''General Design Criteria,'' ensure that the dry cask storage designs are very rugged and robust. The casks must maintain structural integrity during a variety of postulated non-seismic events, including cask drops, tip-over, and wind driven missile impacts. These non-seismic events challenge cask integrity significantly more than seismic events. Therefore, the casks are expected to have substantial design margins to withstand forces from a seismic event greater than the design earthquake.

e. During a seismic event at an ISFSI or MRS, a cask may slide if lateral seismic forces are greater than the frictional resistance between the cask and the concrete pad. The sliding and resulting displacements are computed by the applicant to demonstrate that the casks, which are spaced to satisfy the thermal criteria in part 72 subpart F, are precluded from impacting other adjacent casks. Furthermore, the NRC staff guidance in reviewing cask designs is to show that public health and safety is maintained during a postulated DE. This can be demonstrated by showing that either casks are designed to prevent sliding or tip over during a seismic event, or the consequences of the calculated cask movements are acceptable. Even if the casks slide or tip over and then impact other casks or the pad during a seismic event significantly greater than the proposed DE, there are adequate design margins to ensure that the casks maintain their structural integrity.

f. The combined probability of the occurrence of a seismic event and operational failure that leads to a radiological release is much smaller than the individual probabilities of either of these events. This is because the handling building and crane are used for only a fraction of the licensed period of an ISFSI or MRS and for only a few casks at a time. Additionally, dry cask ISFSIs are expected to handle only sealed casks and not individual fuel assemblies. Therefore, the risk of a potential release of radioactivity due to failure of the cask handling building and/or crane during a seismic event is small.

II. Additional rationale for reducing the DE for new ISFSI or MRS license applicants include the following:

a. Because the DE is a smooth broad-band spectrum, which envelops the controlling earthquake responses, the vibratory ground motion specified is conservative.

b. The crane used for lifting the casks in the building is designed using the same industry codes as for a NPP (ACI 349, AISC N690, ANSI N14.6, and NUREG–0612), and has a safety factor of five (5) or greater for lifted loads using the ultimate strength of the materials. Therefore, the crane would perform satisfactorily during an earthquake much larger than the design earthquake.

c. The determination of a DE for an ISFSI or MRS is consistent with the design approach used in DOE Standard DOE-STD–1020, ''Natural Phenomena Hazards Design Evaluation Criteria for Department of Energy Facilities,'' for similar type facilities.

The present DE (equivalent to the SSE for a NPP) has a mean annual probability of exceedance of approximately 1.0E–04 (*i.e.*, in any one year, the probability is one in ten thousand that the DE established for the site will be exceeded). DG–3021 recommends a mean annual probability of exceedance. The Commission is soliciting public comments on the appropriate mean annual probability of exceedance, as discussed in Section VII of the **SUPPLEMENTARY INFORMATION**.

*C. Proposed Change to 10 CFR 72.212(b)(2)(i)(B)*

The Commission is proposing to modify § 72.212(b)(2)(i)(B) to require that general licensees evaluate dynamic loads, in addition to static loads, in the design of cask storage pads and areas for ISFSIs to ensure that casks are not placed in unanalyzed conditions. During a seismic event, the cask storage pads and areas experience dynamic loads in addition to static loads. The dynamic loads depend on the interaction of the casks, cask storage pads, and areas. Consideration of the dynamic loads of the stored casks, in addition to the static loads, for the design of the cask storage pads and areas, would ensure that the cask storage pads and areas would perform satisfactorily during a seismic event.

The proposed revision would also require consideration of potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion. Depending on the properties of

soil and structures, the free-field earthquake acceleration input loads may be amplified at the top of the storage pad. These amplified acceleration input values must be bound by the design bases seismic acceleration values for the cask, specified in the Certificate of Compliance. Liquefaction of the soil and instability during a vibratory motion due to an earthquake event may affect the cask stability.

The proposed changes to § 72.212 would not actually impose new burden on the general licensees because they currently need to consider dynamic loads to meet the requirements in § 72.212(b)(2)(i)(A). Section 72.212(b)(2)(i)(A) requires that general licensees perform written evaluations to meet conditions set forth in the cask Certificate of Compliance (CoC). These CoCs require that dynamic loads, such as seismic and tornado loads, be evaluated to meet the cask design bases. Specific licensees are currently required, under § 72.122(b)(2), to design ISFSIs to withstand the effects of dynamic loads, such as earthquakes and tornados.

## V. Related Regulatory Guide

The NRC is developing a new regulatory guide, a draft of which has been issued as developed DG–3021, ''Site Evaluations and Determination of Design Earthquake Ground Motion for Seismic Design of Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations.'' This guide is being developed to provide license applicants with the necessary guidance for implementing the proposed regulation. DG–3021 is being developed to provide general guidance and recommendations, describes acceptable procedures and provides a list of references that present acceptable methodologies to identify and characterize capable tectonic sources and seismogenic sources. Section IV.B of this **SUPPLEMENTARY INFORMATION** describes the key elements.

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In the future editorial changes to NUREG–1536, ''Standard Review Plan for Dry Cask Storage Systems,'' and NUREG–1567, ''Standard Review Plan for Spent Fuel Dry Storage Facilities,'' would be made. For example, the standard review plans would need to reference the proposed § 72.103 and the effective version of the draft guide, DG–3021.

## VI. Discussion of Proposed Amendments by Section

This proposed rule would make the following changes to 10 CFR Part 72:

*Section 72.9 Information Collection Requirements: OMB Approval*

In Section 72.9, the list of sections where approved information collection requirements appear is amended to add Section 72.103.

*Section 72.102 Geological and Seismological Characteristics. (Current Heading)*

*Section 72.102 Geological and Seismological Characteristics for Applications Before [insert Effective Date of the Rule] and Applications for Other than Dry Cask Modes of Storage. (Proposed New Heading)*

The heading of § 72.102 is proposed to be revised because § 72.103 is added for ISFSI or MRS applications after the effective date of the rule. Section 72.103 would only apply to dry cask modes of storage. Therefore, the heading of § 72.102 is being modified to show the revised applicability of this section. The requirements of § 72.102 would continue to apply for an ISFSI or MRS using wet modes of storage or dry modes of storage that do not use casks.

The Commission does not intend for existing part 72 licensees to re-evaluate the geological and seismological characteristics for siting and design using the revised criteria in the proposed changes to the regulations. These existing facilities are considered safe because the criteria used in their evaluation have been determined to be safe for NPP licensing, and the seismically induced risk of an ISFSI or MRS is significantly lower than that of a NPP. The proposed change leaves the current § 72.102 in place to preserve the licensing bases of present ISFSIs.

*Section 72.103 Geological and Seismological Characteristics for Applications for Dry Cask Modes of Storage on or After [Insert Effective Date of the Rule].*

The trend towards dry cask storage has resulted in the need for applicants for new licenses to request exemptions from § 72.102(f)(1), which requires that for sites evaluated under the criteria of appendix A to part 100, the DE must be equivalent to the SSE for a NPP. By making § 72.102 applicable only to existing ISFSIs and by providing a new § 72.103, the proposed rule is intended to preclude the need for exemption requests from new license applicants.

The proposed requirements in § 72.103 parallel the requirements in § 72.102. However, new applicants for sites located in either the western U.S. or in the eastern U.S. in areas of known seismic activity, and not co-located with a NPP, for dry cask storage applications, on or after the effective date of this rule, would be required to address the uncertainties in seismic hazard analysis by using a PSHA or sensitivity analyses instead of using the deterministic methods of appendix A to part 100 without sensitivity analyses. Applicants located in either the western U.S. or in areas of known seismic activity in eastern U.S., and co-located with a NPP, have the option of using the proposed PSHA methodology or suitable sensitivity analyses for determining the DE, or using the existing design criteria for the NPP. This proposed change to require an understanding of the uncertainties in the determination of the DE would make the regulations compatible with 10 CFR 100.23 for NPPs and would allow the geological and seismological criteria for an ISFSI or MRS dry cask storage facilities to be risk-informed.

Proposed § 72.103(a)(1) would provide that sites located in eastern U.S. and not in areas of known seismic activity, would be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g. Section 72.103(a)(1) would parallel the requirements currently included in § 72.102(a)(1).

Proposed § 72.103(a)(2) would provide that applicants conducting evaluations in accordance with § 72.103(a)(1) may use a standardized DE described by an appropriate response spectrum anchored at 0.25 g.

These requirements parallel the requirements currently included in § 72.102(a)(2). Section 72.102(a)(2) provides an alternative to determine a site-specific DE using the criteria and level of investigations required by appendix A to part 100. Proposed § 72.103(a)(2) would also provide, as an alternative, that a site-specific DE may be determined by using the criteria and level of investigations in proposed § 72.103(f). Section 72.103(f) is a new provision that would require certain new ISFSI or MRS license applicants to address uncertainties in seismic hazard analysis by using appropriate analyses, such as a PSHA or suitable sensitivity analyses, in determining the DE instead of the current deterministic approach in Appendix A to Part 100.

Proposed § 72.103(a)(2) would also provide that if an ISFSI or MRS is located at a NPP site, the existing geological and seismological design criteria for the NPP may be used instead of PSHA techniques or suitable sensitivity analysis because the risk due to a seismic event at an ISFSI or MRS is less than that of a NPP. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used to ensure that the seismic design criteria used is based on the latest seismic hazard information at the site.

Proposed § 72.103(b) would provide that applicants for licenses for sites located in either the western U.S. or in the eastern U.S. in areas of known seismic activity, must investigate the geological, seismological, and engineering characteristics of the site using the PSHA techniques or suitable sensitivity analysis of proposed § 72.103(f). If an ISFSI or MRS is located at a NPP site, the existing geological and seismological design criteria for the NPP may be used instead of PSHA techniques or suitable sensitivity analysis because the risk due to a seismic event at an ISFSI or MRS is less than that of a NPP. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used to ensure that the seismic design criteria used is based on the latest seismic hazard information at the site.

Proposed § 72.103(c) is identical to § 72.102(c). Proposed § 72.103(c) would require that sites, other than bedrock sites, must be evaluated for the liquefaction potential or other soil instability due to vibratory ground motion. This is to ensure that ISFSI or MRS would be adequately supported on a stable foundation during a seismic event.

Proposed § 72.103(d) is identical to § 72.102(d). Proposed § 72.103(d) would require that site specific investigation and laboratory analysis must show that soil conditions are adequate for the proposed foundation loading. This is to ensure that ISFSI or MRS would be adequately supported on a stable foundation during a seismic event.

Proposed § 72.103(e) is identical to § 72.102(e). Proposed § 72.103(e) would require that in an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred, and that sites with unstable geologic characteristics should be avoided. This is to ensure that sites with minimum deficiencies are selected and that ISFSI or MRS would be adequately supported on a stable foundation during a seismic event.

Proposed § 72.103(f) would describe the steps required for seismic hazard analysis to determine the DE for use in the design of structures, systems, and components of an ISFSI or MRS. The proposed scope of site investigations to determine the geological, seismological, and engineering characteristics of a site and its environs is similar to § 100.23 requirements. Unlike § 72.102(f), which requires that for sites that have been evaluated under the criteria of appendix A to part 100 the DE must be equivalent to the SSE for a NPP, proposed § 72.103(f) requires evaluating uncertainty in seismic hazard analysis by using a PSHA or suitable sensitivity analyses, similar to 10 CFR 100.23 requirements for a NPP.

Proposed § 72.103(f)(1) would require that the geological, seismological, and engineering characteristics of a site and its environs must be investigated in sufficient scope and detail to permit an adequate evaluation of the proposed site and to determine the DE. These requirements track existing requirements in § 100.23(c).

Proposed §§ 72.103(f)(2)(i) through (iv) would specify criteria for determining the DE for the site, the potential for surface tectonic and nontectonic deformations, the design basis for seismically induced floods and water waves, and other design conditions. In particular, § 72.103(f)(2)(i) would provide that a license applicant must address uncertainties in seismic hazard analysis by using appropriate analyses, such as, a PSHA or suitable sensitivity analyses, for determining the DE. Sections 72.103(f)(2)(ii) through (iv) track the corresponding requirements in § 100.23(d).

Finally, the proposed § 72.103(f)(3) would provide that regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum. This provision would be identical to the requirement currently included in § 72.102(f)(2).

*Section 72.212 Conditions of General License Issued Under § 72.210.*

Section 72.212(b)(2)(i)(B) would be revised to require general licensees to address the dynamic loads of the stored casks in addition to the static loads. The requirements would be changed because during a seismic event the cask experiences dynamic inertia loads in addition to the static loads, which are supported by the concrete pad. The dynamic loads depend on the interaction of the casks, the pad, and the foundation. Consideration of the dynamic loads, in addition to the static loads, of the stored casks would ensure that the pad would perform satisfactorily during a seismic event.

The proposed new paragraph would also require consideration of potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion. Depending on the properties of soil and structures, the free-field earthquake acceleration input loads may be amplified at the top of the storage pad. These amplified acceleration input values must be bound by the design bases seismic acceleration values for the cask, specified in the Certificate of Compliance. Liquefaction of the soil and instability during a vibratory motion due to an earthquake event may affect the cask stability, and thus must be addressed.

The proposed changes to § 72.212 are intended to require that general licensees perform appropriate load evaluations of cask storage pads and areas to ensure that casks are not placed in an unanalyzed condition. Similar requirements currently exist in § 72.102(c) for an ISFSI specific license and are proposed in § 72.103(c).

## VII. Specific Question for Public Comment

The Commission welcomes comments on all aspects of this proposed rule and is especially interested in receiving comments on the following question:

*Discussion:* The present mean annual probability of exceedance value for determining the DE for an ISFSI or MRS is approximately 1.0E–04 (*i.e.,* in any one year, the probability is one in ten thousand, which is the reciprocal of 1.0E–04, that the DE established for the

site will be exceeded). This value is based on nuclear plant requirements. The Commission is considering allowing for the use of a mean annual probability of exceedance value in the range of 5.0E–04 (i.e., in any one year, the probability is one in two thousand that the DE established for the site will be exceeded) to 1.0E–04 for ISFSI or MRS applications. Draft Regulatory Guide DG–3021, ''Site Evaluations and Determination of Design Earthquake Ground Motion for Seismic Design of Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations,'' listed in Section V, has been developed to provide guidelines that are acceptable to the NRC staff for determining the DE for an ISFSI or MRS. Currently, DG–3021 recommends a mean annual probability of exceedance value of 5.0E–04 as an appropriate risk-informed value for the design of a dry cask storage ISFSI or MRS. However, the NRC staff is undertaking further analysis to support a specific value. An ISFSI or MRS license applicant would need to demonstrate that the use of a higher probability of exceedance value would not impose any undue radiological risk to public health and safety.

*Question:* In view of this discussion and the discussion in Section IV.C., what is the appropriate mean annual probability of exceedance value to be used for the seismic design of an ISFSI or MRS and what is the justification for this probability?

**VIII. Criminal Penalties**

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR Part 72 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

**IX. Agreement State Compatibility**

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA of 1954, as amended, or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

**X. Plain Language**

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

**XI. Voluntary Consensus Standards**

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC is presenting amendments to its regulations in 10 CFR part 72 for the geological and seismological criteria of a dry cask independent spent fuel storage facility, to make them commensurate with the risk of the facility. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

**XII. Finding of No Significant Environmental Impact: Availability**

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this proposed rule because the Commission has concluded, based on an Environmental Assessment, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment.

The Commission concluded that no significant environmental impact would result from this rulemaking. In comparison with a NPP, an operating ISFSI or MRS is a passive facility in which the primary activities are waste receipt, handling, and storage. An ISFSI or MRS does not have the variety and complexity of active systems necessary to support an operating NPP. Once the spent fuel is in place, an ISFSI or MRS is essentially a static operation and, during normal operations, the conditions required for the release and dispersal of significant quantities of radioactive materials are not present. There are no high temperatures or pressures present during normal operations or under design basis accident conditions to cause the release and dispersal of radioactive materials. This is primarily due to the low heat generation rate of spent fuel after it has decayed for more than one year before storage in an ISFSI or MRS and the low inventory of volatile radioactive materials readily available for release to the environs. The long-lived nuclides present in spent fuel are tightly bound in the fuel materials and are not readily dispersible. The short-lived volatile nuclides, such as I–131, are no longer present in aged spent fuel stored at an ISFSI or MRS. Furthermore, even if the short-lived nuclides were present during an event of a fuel assembly rupture, the canister surrounding the fuel assemblies would confine these nuclides. Therefore, the seismically induced radiological risk associated with an ISFSI or MRS is less than the risk associated with a NPP.

The determination of this environmental assessment is that there will be no significant environmental impact due to the proposed changes because the same level of safety would be maintained by the new requirements, taking into account the lesser risk from an ISFSI or MRS. However, the general public should note that the NRC welcomes public participation. Comments on any aspect of the Environmental Assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the Environmental Assessment and this proposed rule to every State Liaison Officer and requested their comments on the Environmental Assessment. The Environmental Assessment may be examined at the NRC Public Document Room, O–1F21,11555 Rockville Pike, Rockville, MD. Single copies of the Environmental Assessment are available from Keith K. McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–5252, e-mail: *kkm@nrc.gov.*

**XIII. Paperwork Reduction Act Statement**

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). This proposed rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average 2,563 hours per response, including the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0132), Office of Management and Budget, Washington, DC 20503.Comments to OMB on the information collections or on the above issues should be submitted by August 21, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

*Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

**XIV. Regulatory Analysis**

The Commission has prepared a draft Regulatory Analysis (RA) entitled: ''Regulatory Analysis of Geological and Seismological Characteristics for Design of Dry Cask Independent Spent Fuel Storage Installations.'' The RA examines the costs and benefits of the alternatives considered by the Commission.

The Commission requests public comment on the RA. Comments may be submitted to the NRC as indicated under the **ADDRESSES** heading. The RA is available on the NRC rulemaking website at *http://ruleforum.llnl.gov,* and is also available for inspection at the NRC Public Document Room located at One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD. Single copies of the RA are available from Keith K. McDaniel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–5252, e-mail: *kkm@nrc.gov.*

**XV. Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects applicants for a part 72 specific license, and general licensees on or after the effective date of the rule for an ISFSI or MRS. These companies do not generally fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

**XVI. Backfit Analysis**

The Commission has determined that the backfit rule, § 72.62, does not apply to the changes in §§ 72.9, 72.102, and 72.103 because they do not involve any provisions that would impose backfits as defined in § 72.62(a).

Section 72.212(b)(2)(i)(B) currently requires evaluations of static loads of the stored casks for design of the cask storage pads and areas (foundation). The proposed revisions to this section would require general licensees also to address the dynamic loads of the stored casks. During a seismic event, the cask storage pads and areas experience dynamic loads in addition to static loads. The dynamic loads depend on the interaction of the casks, cask storage pads, and areas. Consideration of the dynamic loads of the stored casks, in addition to the static loads, for the design of the cask storage pads and areas, would ensure that the cask storage pads and areas would perform satisfactorily during a seismic event.

The proposed revision would also require consideration of potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion. Depending on the properties of soil and structures, the free-field earthquake acceleration input loads may be amplified at the top of the storage pad. These amplified acceleration input values must be bound by the design bases seismic acceleration values for the cask, specified in the Certificate of Compliance (CoC). The soil liquefaction and instability during a vibratory motion due to an earthquake event may affect the cask stability.

The proposed changes to § 72.212(b)(2)(i)(B) will impact procedures required to operate an ISFSI and; therefore, implicate the backfit rule. The proposed changes would require that general licensees perform appropriate analyses to assure that the cask seismic design bases bound the specific site seismic conditions, and that casks are not placed in an unanalyzed condition. Therefore, these proposed changes are necessary to assure adequate protection to occupational or public health and safety. Although the Commission is imposing this backfit because it is necessary to assure adequate protection to occupational or public health and safety, the proposed changes to § 72.212 would not actually impose new burden on the general licensees because they currently need to consider dynamic loads to meet the requirements in § 72.212(b)(2)(i)(A). Section 72.212(b)(2)(i)(A) requires that general licensees perform written evaluations to meet conditions set forth in the cask CoC. These CoCs require that dynamic loads, such as seismic and tornado loads, be evaluated to meet the cask design bases. Since the general licensees currently evaluate dynamic loads for evaluating the casks, pads and areas, the proposed changes to § 72.212(b)(2)(i)(B) would not actually require any general licensees presently operating an ISFSI to re-perform any written evaluations previously undertaken.

**List of Subjects in 10 CFR Part 72**

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.9, paragraph (b) is revised to read as follows:

**§ 72.9 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 72.7, 72.11, 72.16, 72.22 through 72.34, 72.42, 72.44, 72.48 through 72.56, 72.62, 72.70, through 72.82, 72.90, 72.92, 72.94, 72.98, 72.100, 72.102, 72.103, 72.104, 72.108, 72.120, 72.126, 72.140 through 72.176, 72.180 through 72.186, 72.192, 72.206, 72.212, 72.216, 72.218, 72.230, 72.232, 72.234, 72.236, 72.240, 72.242, 72.244, 72.248.

3. The heading of § 72.102 is revised to read as follows:

**§ 72.102 Geological and seismological characteristics for applications before [insert Effective Date of the Rule] and applications for other than dry cask modes of storage.**

* * * * *

4. A new § 72.103 is added to read as follows:

**§ 72.103 Geological and seismological characteristics for applications for dry cask modes of storage on or after [insert Effective Date of the Rule].**

(a)(1) East of the Rocky Mountain Front (east of approximately 104o west longitude), except in areas of known seismic activity including but not limited to the regions around New Madrid, MO, Charleston, SC, Attica, NY will be acceptable if the results from onsite foundation and geological investigation, literature review, and regional geological reconnaissance show no unstable geological characteristics, soil stability problems, or potential for vibratory ground motion at the site in excess of an appropriate response spectrum anchored at 0.2 g.

(2) For those sites that have been evaluated under paragraph (a)(1) of this section that are east of the Rocky Mountain Front, and that are not in areas of known seismic activity, a standardized design earthquake ground motion (DE) described by an appropriate response spectrum anchored at 0.25 g may be used. Alternatively, a site-specific DE may be determined by using the criteria and level of investigations required by paragraph (f) of this section. For a site with a co-located nuclear power plant (NPP), the existing geological and seismological design criteria for the NPP may be used. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used.

(b) West of the Rocky Mountain Front (west of approximately 104o west longitude), and in other areas of known potential seismic activity east of the Rocky Mountain Front, seismicity must be evaluated by the techniques presented in paragraph (f) of this section. Sites that lie within the range of strong near-field ground motion from historical earthquakes on large capable faults should be avoided. If an ISFSI or MRS is located on a NPP site, the existing geological and seismological design criteria for the NPP may be used. If the existing design criteria for the NPP is used and the site has multiple NPPs, then the criteria for the most recent NPP must be used.

(c) Sites other than bedrock sites must be evaluated for their liquefaction potential or other soil instability due to vibratory ground motion.

(d) Site-specific investigations and laboratory analyses must show that soil conditions are adequate for the proposed foundation loading.

(e) In an evaluation of alternative sites, those which require a minimum of engineered provisions to correct site deficiencies are preferred. Sites with unstable geologic characteristics should be avoided.

(f) The DE for use in the design of structures, systems, and components must be determined as follows:

(1) *Geological, seismological, and engineering characteristics.* The geological, seismological, and engineering characteristics of a site and its environs must be investigated in sufficient scope and detail to permit an adequate evaluation of the proposed site, to provide sufficient information to support evaluations performed to arrive at estimates of the DE, and to permit adequate engineering solutions to actual or potential geologic and seismic effects at the proposed site. The size of the region to be investigated and the type of data pertinent to the investigations must be determined based on the nature of the region surrounding the proposed site. Data on the vibratory ground motion, tectonic surface deformation, nontectonic deformation, earthquake recurrence rates, fault geometry and slip rates, site foundation material, and seismically induced floods and water waves must be obtained by reviewing pertinent literature and carrying out field investigations. However, each applicant shall investigate all geologic and seismic factors (for example, volcanic activity) that may affect the design and operation of the proposed ISFSI or MRS facility irrespective of whether these factors are explicitly included in this section.

(2) *Geologic and seismic siting factors.* The geologic and seismic siting factors considered for design must include a determination of the DE for the site, the potential for surface tectonic and nontectonic deformations, the design bases for seismically induced floods and water waves, and other design conditions as stated in paragraph (f)(2)(iv) of this section.

(i) Determination of the Design Earthquake Ground Motion (DE). The DE for the site is characterized by both horizontal and vertical free-field ground motion response spectra at the free ground surface. In view of the limited data available on vibratory ground motions for strong earthquakes, it usually will be appropriate that the design response spectra be smoothed spectra. The DE for the site is determined considering the results of the investigations required by paragraph (f)(1) of this section. Uncertainties are inherent in these estimates and must be addressed through an appropriate analysis, such as a probabilistic seismic hazard analysis (PSHA) or suitable sensitivity analyses.

(ii) Determination of the potential for surface tectonic and nontectonic deformations. Sufficient geological, seismological, and geophysical data must be provided to clearly establish if there is a potential for surface deformation.

(iii) Determination of design bases for seismically induced floods and water waves. The size of seismically induced floods and water waves that could affect

a site from either locally or distantly generated seismic activity must be determined.

(iv) Determination of siting factors for other design conditions. Siting factors for other design conditions that must be evaluated include soil and rock stability, liquefaction potential, and natural and artificial slope stability. Each applicant shall evaluate all siting factors and potential causes of failure, such as, the physical properties of the materials underlying the site, ground disruption, and the effects of vibratory ground motion that may affect the design and operation of the proposed ISFSI or MRS.

(3) Regardless of the results of the investigations anywhere in the continental U.S., the DE must have a value for the horizontal ground motion of no less than 0.10 g with the appropriate response spectrum.

5. In § 72.212, paragraph (b)(2)(i)(B) is revised to read as follows:

**§ 72.212 Conditions of general license issued under § 72.210.**

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) cask storage pads and areas have been designed to adequately support the static and dynamic loads of the stored casks, considering potential amplification of earthquakes through soil-structure interaction, and soil liquefaction potential or other soil instability due to vibratory ground motion; and

* * * * *

Dated at Rockville, Maryland, this 15th day of July, 2002.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary for the Commission.*

[FR Doc. 02–18436 Filed 7–19–02; 8:45 am]

**BILLING CODE 7590–01–P**

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 121

## Small Business Size Standards

## Waiver of the Nonmanufacturer Rule

**AGENCY:** Small Business Administration.

**ACTION:** Notice of intent to waive the Nonmanufacturer Rule for Hand and Edge Tool Manufacturing.

**SUMMARY:** The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Hand and Edge Tool Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal Government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this document is to solicit comments and potential source information from interested parties.

**DATES:** Comments and sources must be submitted on or before August 2, 2002.

**ADDRESSES:** Address comments to Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW Washington DC, 20416, Tel: (202) 619–0422.

**FOR FUTHER INFORMATI0N CONTACT:** Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

**SUPPLEMENTARY INFORMATION:** Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months.

The SBA defines ''class of products'' based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS).* The second is the Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Hand and Edge Tool Manufacturing, North American Industry Classification System (NAICS) 332212. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

**Linda G. Williams,**

*Associate Administrator for Government Contracting.*

[FR Doc. 02–18368 Filed 7–19–02; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 25

**[REG–123345–01]**

**RIN 1545–AY91**

## Net Gift Treatment Under Section 2519

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed amendments to the regulations relating to the amount treated as a transfer under section 2519 of the Internal Revenue Code when there is a right to recover gift tax under section 2207A(b) and the related gift tax consequences if the right to recover the gift tax is not exercised. The proposed regulations will affect donee spouses who make lifetime dispositions of all or part of a qualifying income interest in qualified terminable interest property. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments and outlines of topics to be discussed at the public hearing scheduled for Tuesday, October 15, 2002, at 10 a.m., must be received by Tuesday, September 24, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–123345–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–123345–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS internet site at www.irs.gov/regs. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, DeAnn K. Malone, (202) 622–7830; concerning submissions of comments, the hearing,

and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

A marital deduction for qualified terminable interest property is allowed for estate tax purposes under section 2056(b)(7) and for gift tax purposes under section 2523(f). Qualified terminable interest property is property transferred by the decedent or donor spouse, in which the donee spouse has a qualifying income interest for life, and for which an election has been made. If the donee spouse makes a lifetime disposition of all or a portion of the qualifying income interest, section 2519 provides that the donee spouse is treated for estate and gift tax purposes as transferring all interests in the property other than the qualifying income interest. Under section 2207A(b), the donee spouse is entitled to recover any gift tax paid with respect to a transfer under section 2519 from the person receiving the transferred property.

Proposed regulations under several sections including sections 2519 and 2207A(b) were issued on May 21, 1984 (49 FR 21350 [LR–211–76, 1984–1 C.B. 598]). The proposed regulations provided that the amount of the gift under section 2519 is reduced by the amount of the gift tax that the donee spouse is entitled to recover under section 2207A(b) and that the donee spouse makes an additional gift if the donee spouse fails to exercise the right to recover the gift tax. These two provisions were not included in the regulations when they were finalized (TD 8522, 1994–1 C.B. 236). The preamble to the final regulations stated that these issues would be the subject of future proposed regulations. Sections 25.2519–1(c)(4) and 25.2207A–1(b) were reserved for those provisions.

**Explanation of Provisions**

Section 2207A(b) statutorily shifts the burden for paying the gift tax imposed on a transfer under section 2519 from the donee spouse to the person receiving the transferred property. The payment of gift tax by the person receiving the property benefits the donee spouse because the donee spouse is liable for the payment of this tax and, absent the right of recovery, would be required to pay the tax from the donee spouse's own assets.

The proposed regulations will amend the regulations under section 2519 to provide that the amount of the transfer under section 2519 is reduced by the amount of the gift tax that the donee spouse is entitled to recover under section 2207A(b). The amount of gift tax recoverable and the amount of the remainder interest treated as transferred under section 2519 are determined by using the interrelated computation applicable to other transfers in which the transferee agrees to pay the gift tax. See Rev. Rul. 81–23 (1981–2 C.B. 189).

In addition, the proposed regulations will amend the regulations under section 2207A(b) to provide that if the donee spouse fails to exercise the right to recover the gift tax, the donee spouse makes a gift in the amount of the unrecovered gift tax to the person from whom the recovery of gift tax could have been obtained.

**Proposed Effective Date**

The regulations will apply to any transfer under section 2519 where there is a right to recover gift tax under section 2207A(b) that occurs on or after the date final regulations are published in the **Federal Register**.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the regulations will be submitted to the Small Business Administration for comment on their impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, October 15, 2002, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must use the main building entrance on Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, September 24, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal author of these proposed regulations is DeAnn K. Malone, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 25**

Gift taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 25 is proposed to be amended as follows:

## PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

**Paragraph 1.** The authority citation for part 25 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805. * * *

**Par. 2.** Section 25.2207A–1 is amended by adding the text of paragraph (b) to read as follows:

### § 25.2207A–1 Right of recovery of gift taxes in the case of certain marital deduction property.

* * * * *

(b) *Failure of a person to exercise the right of recovery.* The failure of a person to exercise a right of recovery provided by section 2207A(b) upon a lifetime transfer subject to section 2519 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts to the person(s) from whom the recovery

could have been obtained. See § 25.2511–1. The transfer is considered to be made when the right to recovery is no longer enforceable and is treated as a gift even if recovery is impossible. Any delay in the exercise of the right of recovery shall be treated as an interest-free loan with the appropriate gift tax consequences.

* * * * *

**Par. 3.** Section 25.2519–1 is amended as follows:

1. Paragraph (c)(1) is amended by adding a sentence to the end of the paragraph.

2. The paragraph heading for paragraph (c)(4) is revised and the text of paragraph (c)(4) is added.

3. Paragraph (g) introductory text is revised.

The additions and revisions read as follows:

**§ 25.2519–1 Disposition of certain life estates.**

* * * * *

(c) * * * (1) * * * See paragraph (c)(4) of this section for the effect of gift tax that the donee spouse is entitled to recover under section 2207A.

* * * * *

(4) *Effect of gift tax entitled to be recovered under section 2207A on the amount of the transfer.* The amount treated as a transfer under paragraph (c)(1) of this section is further reduced by the amount the donee spouse is entitled to recover under section 2207A(b) (relating to the right to recover gift tax attributable to the remainder interest). If the spouse is entitled to recover gift tax under section 2207A(b), the amount of gift tax recoverable and the value of the remainder interest treated as transferred under section 2519 are determined by using the same interrelated computation applicable for other transfers in which the transferee assumes the gift tax liability. The gift tax consequences of failing to exercise the right of recovery are determined separately under § 25.2207A–1(b).

* * * * *

(g) *Examples.* The following examples illustrate the application of paragraphs (a) through (f) of this section. Except as provided otherwise in the examples, assume that the decedent, D, was survived by spouse, S, that in each example the section 2503(b) exclusion has already been fully utilized for each year with respect to the donee in question, that section 2503(e) is not applicable to the amount deemed transferred, and that the gift taxes on the amount treated as transferred under paragraph (c) are offset by S's unified credit. The examples are as follows:

* * * * *

**Robert E. Wenzel,**

*Deputy Commissioner of the Internal Revenue Service.*

[FR Doc. 02–18184 Filed 7–19–02; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 261–0362b; FRL–7247–9]**

### Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from organic solvents, organic solvent degreasing operations and organic solvent cleaning, storage and disposal. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by August 21, 2002.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

**FOR FURTHER INFORMATION CONTACT:** Charnjit Bhullar, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: SJVUAPCD 4661, 4662, and 4663. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 2, 2002.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 02–18400 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 02–1481, MB Docket No. 02–153, RM–10454]**

### Television Broadcast Service; New Iberia, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Iberia Communications, LLC, an applicant for NTSC Channel 53 at New Iberia, Louisiana, proposing the substitution of Channel 50 for Channel 53 at New Iberia. TV Channel 50 can be allotted to at reference coordinates 29–55–12 N. and 91–46–07 W. with a zero offset.

**DATES:** Comments must be filed on or before August 22, 2002, and reply comments on or before September 6, 2002.

**ADDRESSES:** The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making *(except in broadcast allotment proceedings). See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger

delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard M. Weiss, Fletcher, Heald & Hildreth, PLC, 11th Floor, 1300 North 17th Street, Arlington, Virginia 22209–3801 (Counsel for Iberia Communications LLC).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–153, adopted June 24, 2002, and released July 1, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television 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.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Table of Television Allotments under Louisiana, is amended by removing Channel 53 and adding Channel 50 at New Iberia.

Federal Communications Commission

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 02–18370 Filed 7–19–02; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AI61**

## Endangered and Threatened Wildlife and Plants; Listing the Sonoma County Distinct Population Segment of the California Tiger Salamander as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), propose to make permanent the provisions of the emergency rule listing the Sonoma County distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*), as endangered under the Endangered Species Act of 1973, as amended (Act). The emergency rule listing the population is published concurrently in this issue of the **Federal Register**. The Sonoma County DPS of the California tiger salamander is currently known from only seven viable breeding sites and associated uplands.

This species is imperiled by a variety of factors including habitat destruction, degradation, and fragmentation due to urban development. Other threats include road construction, pesticide drift, collection, and inadequate regulatory mechanisms. Extinction also could occur by naturally occurring events due to the small, isolated nature of the remaining breeding sites. We find these threats constitute a significant and immediate risk to the Sonoma County DPS of the California tiger salamander.

We solicit additional data and information that may assist us in making a final decision on this proposed action. This proposal, if made final, would extend the Federal protection and recovery provisions of the Act to this species.

**DATES:** We will accept comments until the close of business on September 20, 2002. Public hearing requests must be received by September 5, 2002.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor (Attn: SCCTS), Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825.

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

(3) You may send comments by electronic mail (e-mail) to: *fw1sccaliforniatiger@r1.fws.gov.* See the Public Comments Solicited section below for file format and other information on electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Chris Nagano or David Wooten, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/414–6600; facsimile 916/414–6713).

**SUPPLEMENTARY INFORMATION:**

### Background

For a discussion of biological background information, previous Federal action, factors affecting the species, critical habitat, and conservation measures available to listed and proposed species, consult the emergency rule on the Sonoma County Distinct Vertebrate Population Segment of the California tiger salamander (Sonoma County California tiger salamander) published concurrently in this issue of the **Federal Register**.

### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are soliciting comments from the public, other concerned governmental agencies, the scientific community, industry, or any other

interested party concerning this proposed rule. We are particularly seeking comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Sonoma County California tiger salamander;

(2) The location of any additional populations or breeding sites of this species, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

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

(4) Current or planned activities or land use practices in the subject area and their possible impacts on this species.

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–AI61]'' 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 Sacramento Fish and Wildlife Office at 916/414–6600.

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

In making any final decision on this proposal, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

**Public Hearings**

The Act requires that we hold one or more public hearings on this proposal, if requested within 45 days of the date of publication of a proposed rule. Such requests must be made in writing and be addressed to the Field Supervisor, (Attn: SCCTS), Sacramento Fish and Wildlife Office (see **ADDRESSES** section). Should a public hearing be requested, then we will announce the date, time, and place for the hearing in the **Federal Register**, through legal notices in area newspapers, and in news releases to the media.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send the peer reviewers copies of this proposed rule, as well as the emergency rule, immediately following publication in the **Federal Register**. We will invite them to comment, during the public comment period, on specific assumptions and conclusions regarding the proposed rule to list the Sonoma County California tiger salamander.

**National Environmental Policy Act**

We have determined that an environmental assessment and 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 as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Executive Order 12866**

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 the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

**Paperwork Reduction Act**

This rule does not include any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget control number 1018–0094 which expires on July 31, 2004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, *see* 50 CFR 17.21 and 17.22.

**Executive Order 13211**

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not significant energy action, and no Statement of Energy Effects is required.

**Author**

The primary author of this proposed rule is Chris Nagano, Deputy Chief, Endangered Species Division, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

**Regulation Promulgation**

For the reasons given in the preamble to the emergency rule listing the Sonoma County Distinct Vertebrate Population of the California tiger salamander as endangered, published concurrently in this issue of the **Federal Register**, 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. Amend § 17.11(h) by adding the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

**§ 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 | | | | | | |
| * | * | * | * | * | * | * | |
| AMPHIBIANS | | | | | | | |
| * | * | * | * | * | * | * | |
| Salamander, California tiger. | *Ambystoma californiense*. | U.S.A. (CA) ..... | U.S.A. (CA—Sonoma County). | E | 729 | NA | NA |
| * | * | * | * | * | * | * | |

Dated: July 16, 2002.

**Marshall P. Jones,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 02–18451 Filed 7–19–02; 8:45 am]

BILLING CODE 4310–55–P

# Notices

Federal Register
Vol. 67, No. 140
Monday, July 22, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. LS–02–08]**

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension and revision of a currently approved information collection used to compile and generate the livestock and meat market reports for the Livestock and Grain Market News Program.

**DATES:** Comments on this notice must be received by September 20, 2002, to be assured of consideration.

*Additional Information or Comments:* Comments may be mailed to Jimmy A. Beard; Assistant to the Chief; Livestock and Grain Market News Branch, Livestock and Seed Program, AMS, USDA; STOP 0252; 1400 Independence Avenue, SW.; Washington, DC 20250–0252; Phone (202) 720–8054; Fax (202) 690–3732; or e-mail to *John.VanDyke@usda.gov.* All comments received will be available for public inspection at this address during the hours of 8 a.m. to 4 p.m. Monday through Friday, and on the Internet at *http://www.ams.usda.gov/lsg/mncs.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

**SUPPLEMENTARY INFORMATION:**

*Title:* Livestock and Meat Market Reports.

*OMB Number:* 0581–0154.

*Expiration Date of Approval:* 09–30–2002.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq*) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization.

Under this market news program, USDA issues market news reports covering the livestock and meat trade, which includes a wide range of industry contacts, including packers, processors, producers, brokers, and retailers. These reports are compiled on a voluntary basis, in cooperation with the livestock and meat industry. The information provided by respondents initiates market news reporting, which must be timely, accurate, unbiased, and continuous if it is to be useful to the industry. The livestock and meat industry requested that USDA issue livestock and meat market reports in order to assist them in making immediate production and marketing decisions and as a guide in making sound marketing decisions. The industry uses the livestock and meat reports for assistance in making marketing and production decisions. Also, since the Government is a large purchaser of meat, the reporting and use of this data is helpful.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated at .03 hours per response.

*Respondents:* Business or other for-profit, individuals or households and farms.

*Estimated Number of Respondents:* 450.

*Estimated Number of Responses per Respondent:* 520.

*Estimated Total Annual Burden on Respondents:* 7,020 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance 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.

Dated: July 16, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–18338 Filed 7–19–02; 8:45 am]
**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Winter Motorized Recreation Forest Plan Amendment, Flathead National Forest, Flathead, Lake Missoula, Lincoln and Sanders Counties, MT

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) to amend the Flathead National Forest Land and Resource Management Plan (hereafter referred to as Forest Plan) management direction regarding winter snowmobile use. The amendment covers the entire Flathead National Forest.

**DATES:** Comments concerning the proposed action should be received in writing on or before 30 days after publication of this notice in the **Federal Register**. The draft EIS is expected to be filed with the Environmental Protection Agency and made available for public review in October 2002. No date has yet been determined for filing the final EIS.

**ADDRESSES:** Send written comments to Terry Chute, Planning Staff Officer, 1935 3rd Avenue East, Kalispell, Montana 59901 or call (406) 758–5243.

**FOR FURTHER INFORMATION CONTACT:** Terry Chute, Planning Staff Officer, 1935 3rd Avenue East, Kalispell, Montana 59901 or call (406) 758–5243.

**SUPPLEMENTARY INFORMATION:** The existing Forest Plan does not adequately address winter-motorized access. In response to administrative appeals of the Forest Plan, the Associate Chief of the Forest Service directed the Regional

Forester ''to clarify the LRMP management direction to eliminate any confusion about motorized use in MA–2A areas.'' For various reasons that clarification did not occur.

In response to a 1999 lawsuit, a federal Magistrate recommended that the Flathead National Forest be ordered to close all Management Area (MA) 2A areas to motorized use. These MA 2A areas include many popular snowmobile play areas, as well as groomed snowmobile trails. The parties to the lawsuit agreed to a settlement that included preparation of a Forest Plan amendment in an open public forum to develop Forest-wide winter motorized recreation direction.

The Purpose and Need for this amendment is to:

1. Clarify Forest Plan management direction to eliminate any confusion about motorized use in MA–2A areas.

2. Meet the requirements of a settlement agreement resulting from a lawsuit challenging the Flathead Forest Plan.

3. Determine long-term winter recreation management direction related to motorized use.

The Proposed Action for the Winter Motorized Recreation Amendment includes the following features:

• A new Forest-wide standard would be added to the Forest Plan that would incorporate a set of winter motorized recreation maps into the Forest Plan, which would provide direction on where winter motorized use may and may not occur.

• Forest-wide and management area direction would be reviewed and clarified as needed to provide clear direction regarding winter motorized access.

The Forest Service believes it is important to give reviewers notice at this early stage 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).* Also, 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. *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 of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

The Responsible Official is the Forest Supervisor of the Flathead National Forest, 1935 3rd Avenue East, Kalispell, Montana 59901. The Forest Supervisor will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies, The decision and rationale for the decision will be documented in a Record of Decision. That decision will be subject to appeal under applicable Forest Service regulations.

Dated: July 15, 2002.

**Cathy Barbouletos,**

*Forest Supervisor—Flathead National Forest.*

[FR Doc. 02–18483 Filed 7–19–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### North Fork of Pound Natural Gas Development Project, Clinch Ranger District, Wise County, VA

**AGENCY:** Forest Service, USDA.

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

**SUMMARY:** The federal government proposes to approve exploration and development of a federal oil and gas lease on Pine Mountain above North Fork of Pound Lake in Wise County, Virginia. This proposed action is in response to the Notice of Staking (NOS) the federal government has received from the lessee, Equitable Production Company. The proposed gas wells and associated roads and pipelines are to be located on the Clinch Ranger District of the George Washington and Jefferson National Forests.

**DATES:** Comments concerning the scope of the analysis must be received by August 19, 2002. The draft environmental impact statement (DEIS) is expected in September 2003 and the final environmental impact statement (FEIS) is expected in March 2004.

**ADDRESSES:** Send written comments to District Ranger Sten Olsen, Clinch Ranger District, 9416 Darden Drive, Wise Virginia 24293.

**FOR FURTHER INFORMATION CONTACT:** District Ranger Sten Olsen, Clinch Ranger District, 9416 Darden Drive, Wise, Virginia 24293/(276)–328–2931.

**SUPPLEMENTARY INFORMATION:** Congress established the federal oil and gas-leasing program under which oil and gas leases are issued to, and developed by, private enterprise. In 1984, the federal government issued federal oil and gas lease VAES–32510 covering 4,836 acres of federal land in the North Fork Pound area of Wise County, Virginia. The federal lease was issued for the purpose of exploration and development of oil and gas on the Clinch Ranger District of the George Washington and Jefferson National Forests. The holder of the lease (lessee) has the right to access the area, and occupy as much of the surface as is reasonable and necessary in order to explore and develop the mineral resource.

The lessee, Equitable Production Company, has filed with the USDA, Forest Service; and the Department of the Interior (DOI), Bureau of Land Management (BLM), a NOS to drill multiple gas wells, thereby fulfilling the purpose of federal lease, VAES–32510. The NOS is a preliminary step, which facilitates the selection of acceptable drilling locations by the lessee, the Forest Service, and the BLM prior to the submission of the Application for Permit to Drill (APD). The federal government must approve an APD before a lessee could build roads, drill wells, or otherwise occupy the surface of the lease. Both the Forest Service and the BLM have specific authority related to the APD approval. The federal government is required to make a timely decision on approving and issuing an APD to construct roads and well pads, drill wells, and install pipelines.

Since 1990, production from a private well located adjacent to the leased lands has been allocated to a small portion of federal lease. VAES–32510. While the federal lease has been held by production from this private well, the lessee now plans to develop natural gas field on the much larger, remaining portion of the leased tract.

The proposed gas well development is an energy project requiring an expedited review by the Departments of the Interior and Agriculture in accordance with Executive Order 13212. In addition, the Energy Security Act of 1980 directs the Secretary of Agriculture to process applications fro leases and permits to explore, drill and develop resources on National Forest System lands, notwithstanding of the current status of the Land and Resource

Management Plan (Forest Plan). This means that the Forest Service must process the applications for these permits regardless of the current status of the Revision of the Jefferson Forest Plan.

The proposed action is the approval of multiple APDs to drill 21 wells, construct 11 miles of road, and install 12 miles of pipeline. Most of the pipeline corridors will be located along the 11 miles of road corridor. About one mile of pipeline corridor would not be along the road corridor, but would be within the boundary of the lands within the lease. Each well pad will initially require a 1.5-acre clearing. Once production is obtained, each well pad will be reduced in size to one-half acre, and the remainder of the original well pad will be reclaimed. When natural gas production ceases, wells will be plugged and the well pads and any unnecessary facilities will be reclaimed.

The following permits or licenses would be required to implement the proposed action: Application for Permit to Drill; DOI Bureau of Land Management, and Permit to Drill; Virginia Department of Mines, Minerals & Energy.

No significant ground-disturbing management activities have occurred in the vicinity since coming under Forest Service management in 1983. Nearly all of the proposed gas development occurs within the North Fork of Pound Roadless Area (NFPRA). The NFPRA was identified as a roadless area in 1997 as part of the roadless inventory for the Jefferson Forest Plan revision process. The Roadless Area Conservation Initiative recognizes existing rights, and provides for development of current leases, along with associated roads necessary for access.

The preliminary alternatives to be considered include the proposed action and the no-action alternative. The cumulative effects section of the EIS for the subject 21 well projects will also consider the cumulative effects from a separate proposal involving the exercise of private oil and gas rights under the federal surface of U.S. tract J–1352d. This tract is located just west of the lands covered by federal oil and gas lease VAES–32510. The exercise of these private oil and gas rights, which were reserved at the time the United States acquired the lands, are subject to 1963 Secretary of Agriculture's Rules and Regulations. Development of the private rights would result in the drilling of 4 wells and the construction of about 13,500 feet of access roads and pipelines. A portion of the proposed road construction would occur in the western part of the NFPRA in an area where the federal government does not own the oil and gas rights.

Public comments received during a previous analysis of the North Fork of Pound Opportunity Area tentatively identified the following preliminary issues:

Issue 1. The roads, pipelines and well pads associated with this project may negatively impact the North Fork of Pound Roadless Area's qualifications for Congressional Wilderness designation.

Issue 2. The roads, pipelines and well pads associated with this project may increase sedimentation in North Fork of Pound Lake, a municipal water supply for the town of Pound.

Issue 3. The roads, pipelines and well pads associated with this project may negatively impact the visual quality of the area, especially in Forest Service developed recreation sites at North Fork of Pound Lake.

This notice is to inform the public of the proposed action and invite the public to participate by providing any comments or information they may have concerning the proposal. This information will be used to identify important issues and determine the extent of the analysis necessary to make an informed decision on the proposal. Such issues will assist in the formulation of additional alternatives and the development of mitigation measures necessary to reduce impacts. To allow us to better consider comments, please make them as specific as possible to the proposed action.

A DEIS will be prepared for comment. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

At this early stage, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEISs 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 Corp.* v. *NRDC, 435 U.S. 519, 533 (1978).* Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS 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 FEIS.

To assist the Forest Service in identifying and considering issues and concerns on 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.

The Forest Service is the lead agency for managing surface use of the project vicinity during and after development. The Forest Service is the lead agency for the environmental analysis. The BLM will be a cooperating agency.

Federal oil and gas lease VAES–32510 was issued in 1984. The federal decision now ripe is now to implement the lease through approval of APDs for oil and gas lease operations. The federal decision includes decisions about proposed locations of roads, oil and gas wells, and other facilities, as well as about Conditions of Approval to mitigate or reduce environmental impacts. The decision to be made by the Forest Service is whether to approve the surface use plan of operations (SUPO) part of the APD's. The BLM decision is whether to approve the drilling plans. Once the BLM has received the Forest Service approval of the SUPO's, and the Conditions of Approval, they will issue the actual APD's.

The Regional Forester will decide which mitigation measures and monitoring requirements to include with the surface use plan of operations in the APD's.

The Responsible Official for Forest Service is Robert T. Jacobs, Regional Forester—Southern Region; 1720 Peachtree Road NW., Atlanta, GA 30309. The Responsible Official for the BLM is Bruce E. Dawson, Field Manager, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: July 10, 2002.

**Eurial Turner,**

*Deputy Regional Forester for Operations.*

[FR Doc. 02–17949 Filed 7–19–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Notice of Intent To Prepare an Environmental Impact Statement

**AGENCY:** Forest Service, Santa Fe National Forest, USDA, and Bureau of Land Management, Taos Field Office, Interior.

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

**SUMMARY:** The USDA Forest Service (FS) and USDI Bureau of Land Management (BLM) will prepare an environmental impact statement (EIS) on a proposal that if authorized would permit the construction and operation of the Buckman Water Diversion Project on public lands managed by the FS and BLM, Santa Fe County, New Mexico. The City of Santa Fe (City), Santa Fe County (County), and Las Campanas Limited Partnership (Las Campanas) have each submitted Special Use Applications (SUP) requesting the use of these lands for this water diversion project.

The facilities necessary to implement this project include an intake structure on the eastern bank of the Rio Grande; sediment settling ponds (or an equivalent technical means of removing sand before pumping the water away from the river); pumps and pipes to move the water approximately 15 miles to the vicinity of its use, and two water treatment plants (one located on private land and one located on land leased by the City from the BLM), where the raw water will be treated to safe drinking water standards.

Estimated water diversion quantities used for the analysis will be based on annual demand projections that extend to the year 2010 for the City and County, while the demand for Las Campanas is projected for a longer period (*e.g.* to community build out). These projections translate to approximately 8,750 acre feet per year (AFY), currently estimated to be 5,230 AFY for the City; 1,700 AFY for the County; and 1,800 AFY for Las Campanas. The proposed diversion facility is sized for a combined net peak diversion of approximately 28.2 cubic feet per second (cfs).

The agencies invite written comments and suggestions on the scope of the analysis. The agencies also hereby give notice of the environmental analysis and decision-making process that will occur on the proposal so interested and affected people are aware of how they may participate and contribute to the final decision.

**DATES:** Comments concerning the scope of the proposed project must be received no later than September 5, 2002. Refer to Supplemental Information regarding public disclosure of submitted comment information.

**ADDRESSES:** Send written comments to Mr. Sandy Hurlocker, NEPA Coordinator, USDA–FS, Española Ranger District, P.O. Box 3307, Española, New Mexico, 87533. Electronic mail (e-mail) may be sent to *shurlocker@fs.fed.us* and FAX may be sent to (505) 753–9411.

**FOR FURTHER INFORMATION CONTACT:** Sandy Hurlocker, NEPA Coordinator, Española Ranger District, (505) 753–7331.

**SUPPLEMENTARY INFORMATION:** Continuing water shortages in the City of Santa Fe and the surrounding area have resulted in a critical and immediate need for developing a sustainable means of accessing water supplies. The Buckman Well Field is being used to access existing water rights. However, the well field cannot provide a reliable source of water due to declining well yields, significant drops in ground water levels near the well field, and potential limitations to pumping due to depletions of nearby streams. Even at current levels undesirable consequences to ground water levels and nearby streams are expected to occur unless an alternate supply is found for the near term.

The project applicants (City of Santa Fe, Santa Fe County, and Las Campanas Limited Partnership) have proposed the Buckman Water Diversion Project to meet the immediate need for a sustainable means of accessing water supplies that make more direct use of the Applicants' water rights by diverting San Juan-Chama Project water and native Rio Grande water while reducing impacts to the aquifer.

Proposed Action: The Applicants propose to construct and operate a surface water diversion facility at the Rio Grande near the western terminus of Buckman Road located within the Santa Fe National Forest, near the existing Buckman water management area (also known as the Buckman Well Field). The water will be pumped to the Santa Fe vicinity, where it will serve municipal and community water supply customers.

The Buckman Water Diversion Project will involve diversion of San Juan-Chama water, which is released from storage in upstream reservoirs, and native Rio Grande water. The Buckman diversion is proposed to be constructed with the capacity necessary to meet the near-term need for water, based on various physical, technical, and environmental limitations. This proposed project has an independent utility from the long-term water management strategy being undertaken by the City and the County.

At this point in the analysis, the only alternative to the proposed action identified is the no action alternative.

The USDA Forest Service (FS) and USDI Bureau of Land Management (BLM) are co-lead agencies. The USDI Bureau of Reclamation (Reclamation), the City of Santa Fe (City), and Santa Fe County (County) have been granted cooperating agency status in accordance with 40 CFR 1501.6. Reclamation is participating as a cooperating agency because it may contribute federal funds to the project.

The responsible Officials are the Forest Supervisor, Santa Fe National Forest 1474 Rodeo Road, P.O. Box 1689, Santa Fe, NM, 87504–1689, and the Taos Area Manager for the Taos Field office of the BLM, 226 Cruz Alta Taos, NM 87571.

The NEPA decision to be made by FS and BLM officials is whether or not to authorize the construction and operations/maintenance of the Buckman water diversion project facilities on FS and BLM managed lands as proposed by the applicants, or an alternative to the proposed facilities.

The scoping process will include public meetings, field reviews and interaction with various Federal and State agencies. Public scoping meetings will be announced in area media, as well as posted on Forest Service and BLM Internet sites. Meetings are expected to occur between June and August of 2002 as part of the initial scoping for the project. Additional public meetings will be held once the Draft EIS is available for review.

Preliminary issues include the following:

- Impacts (both beneficial and adverse) to water resources.
- Impacts of construction to existing infrastructure (roads, powerlines, buried utilities)
- Impacts to fish and aquatic habitats
- Impacts to recreation use, including river guides, as well as the scenic resources associated with the area.

• Impacts of traffic. This includes short-term increases caused by construction traffic as well as longer-term increases in traffic resulting from proposed road improvements.

In addition to evaluating these preliminary issues, the environmental evaluation will assess the potential effects that the proposed project may have on Indian trust assets, as well as assessing the potential effects that the proposed project may have on minority and low-income populations. Economic impacts of the proposed action as well as no action will be considered, as will other social considerations.

In addition to the permits issued by the Forest Service and BLM, the following permits may be necessary for implementation of the project:

• *US Army Corps of Engineers*—Section 404 Permit (including Section 10 Navigable Waters, Section 401 Water Quality Certification, etc.). Includes both in-river construction and construction and construction in designated arroyos (*e.g.,* pipeline crossings). Coordination with FEMA may be required to cover changes to 100-year flood levels or for construction of facilities in 100-year floodplain.

• *US Environmental Protection Agency, Region VI*—National Pollution Discharge Elimination System (NPDES) Permit for settled sand return line from sedimentation pond to Rio Grande.

The following permits may be required by the State of New Mexico:

• *Office of the State Engineer*—Application for approval of a permit to Divert Surface Water and for a Point of Diversion for San Juan-Chama Water (City and County), and a permit to Change of Place and Purpose and Use and Point of Diversion for native Rio Grande water (County and Las Campanas).

• *Environment Department*—Certification of federal NPDES discharge permit.

• *Environment Department*—Construction storm water NPDES permits for construction of diversion and near-river facilities, pipelines, booster stations, water treatment plants, and treated water distribution piping.

• *Environment Department*—Review of plans & specifications for compliance with Safe Drinking Water Act and related rules.

• *Land Use Office*—Right-of-way permit for facilities on State Lands.

• *Office of Cultural Affairs, Historic Preservation Division*—Section 106 Historic Preservation Permit (requirements typically covered via EIS NHPA review).

The following permits may be required by the County and City:

• *Santa Fe County*—Land Development Permit; Building Permit (near-river facilities and booster station facilities); Floodplain Development Permit.

• *City of Sant Fe*—Wastewater Discharge Permit for reject water or any other discharges from the Water Treatment Facility to the City sanitary sewer system; Approved Development Plan; Building Permit, Grading Permit, and Utilities Permit; Noise Permit (only if any construction work in the City is to be performed outside the hours of 6 am to 8 pm); Temporary (construction) and permanent easements or rights-of-way for land ownerships other than those already listed (*e.g.,* railroads).

Actual permits required will depend upon the selected alternative.

**Comment Requested**

This notice of intent initiates the scoping process that guides the development of the environmental impact statement. The lead agencies invite written comments and suggestions on the proposed action, including any issues to consider, as well as any concerns relevant to the analysis. In order to be most useful, scoping comments should be received within 45 days of publication of this Notice of Intent.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act (FOIA), you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law, but persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days. All submissions from organizations and business, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215.

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

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).*

Also, 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 60-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 lead agencies 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. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The draft environmental impact statement is expected in June of 2003 and the final environmental impact statement is expected in November of 2003.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 24, 2002.

**Leonard Atencio,**

*Santa Fe Forest Supervisor.*

**Ron Huntsinger,**

*Taos Field Manager.*

[FR Doc. 02–18337 Filed 7–19–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Central Idaho Resource Advisory Committee Salmon-Challis National Forest Butte, Custer, and Lemhi Counties, Idaho

**AGENCY:** Forest Service, USDA.

**SUMMARY:** The Central Idaho Resource Advisory Committee will meet at 1:30 p.m., July 26, 2002 at the Salmon-Challis National Forest Supervisor's Office, Highway 93 South, Salmon Idaho.

The 15 member committee will be evaluating proposed projects and recommending projects to the Salmon-Challis National Forest. The committee will also discuss individual project proposals for 2002. The meeting is open to the public and time will be scheduled for public comments.

The Central Idaho Resource Advisory Committee was established by the Secretary of Agriculture under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 to work collaboratively with the Salmon-Challis National Forest to provide advice and recommendations consistent with the purposes of the Act.

**George P. Matejko,**

*Forest Supervisor, Salmon-Challis National Forest, Designated Federal Official.*

[FR Doc. 02–18430 Filed 7–19–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Intent To Prepare an Environmental Impact Statement

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement for the Little Otter Creek Watershed Plan, Caldwell County, Missouri.

**SUMMARY:** Notice is hereby given that in accordance with the National Environmental Policy Act of 1969, the U.S. Department of Agriculture-Natural Resources Conservation Service, the Caldwell County Commission (Missouri), and the Caldwell County Soil and Water Conservation District will prepare an Environmental Impact Statement to assess potential environmental impacts associated with the construction of a multiple-purpose reservoir in the Little Otter Creek Watershed. The proposed reservoir (Site LO–1), will provide rural water supply; fish and wildlife habitat enhancement; recreational development; and flood prevention. The reservoir permanent pool will be 362 acres.

The reservoir will yield 1,240,000 gallons of water per day. It will also provide an estimated 60,000 annual public recreational visits, provide recreational facilities and public opportunities for fishing, walking/biking, and family and social events, provide wetland and wildlife habitat development, and reduce flood damages to lower stream reaches by 96 percent.

**FOR FURTHER INFORMATION CONTACT:** Harold Deckerd, Assistant State Conservationist, USDA-Natural Resources Conservation Service, Parkade Center, Suite 250, 601 Business Loop 70 West, Columbia, MO 65203, (573) 876–0900.

**Harold L. Deckerd,**

*Acting Assistant State Conservationist for Water Resources, for Roger A. Hansen, State Conservationist.*

[FR Doc. 02–18360 Filed 7–19–02; 8:45 am]

**BILLING CODE 3410–16–M**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–824]**

### Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order, and Intent to Revoke Order in Part

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

**ACTION:** Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part.

**SUMMARY:** In accordance with 751(b) of the Tarriff Act of 1930 (''the Act'') and section 351.216(b) of the Department of Commerce's (''the Department'') regulations, Uchiyama America, Inc. (''Uchiyama'') filed a request for a changed circumstances review of the antidumping order on certain corrosion-resistant carbon steel flat products from Japan with respect to the carbon steel flat products as described below. Domestic producers of the like product have affirmatively expressed no interest in continuation of the order with respect to these particular products. In response to Uchiyama's request, the Department is initiating a changed circumstances review and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** July 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3207.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 C.F.R. Part 351 (2002).

#### Background

On May 29, 2002, Uchiyama requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Uchiyama requested that the Department revoke the order with respect to imports meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a

layer consisting of phosphate, and finally a layer consisting of silicate.

**Scope of Review**

The products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900 - 990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also, excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

**Initiation of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke Order in Part**

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (i.e., a changed circumstances review) where the Department determines that ''producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in issuance of an order.'' Section 782(h)(2) of the Act. *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands: Initiation and Preliminary Results of Changed Circumstances Review*, 66 FR 57415, 57416 (November 15, 2001). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g)(i) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 C.F.R. 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist.

In addition, in the event that the Department concludes that expedited action is warranted, 19 C.F.R. 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 C.F.R. 351.216 and 351.222(g), based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation; National Steel Corporation; and United States Steel Corporation (''Domestic Producers''), no further interest exists in continuing the order with respect to certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate. See Domestic Producers' July 3, 2002, letter to the Department. Therefore, we are initiating this changed circumstances administrative review.

Furthermore, because domestic producers have expressed a lack of interest, we determine that expedited action is warranted, and we preliminarily determine that continued application of the order with respect to certain corrosion-resistant carbon steel flat products falling within the description above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order with respect to imports of certain corrosion-resistant carbon steel flat products meeting the above-mentioned specifications from Japan.

If the final revocation in part occurs, we intend to instruct the U.S. Customs Service (''Customs'') to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, not subject to final results of administrative review as of the date of publication in the Federal Register of the final results of this changed circumstances review in accordance with 19 C.F.R. 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on certain corrosion-resistant carbon steel flat products meeting the above specifications will continue unless and until we publish a final determination to revoke in part.

**Public Comment**

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Pursuant to 19 C.F.R. 351.309(d)(1), rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 C.F.R. 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 C.F.R. 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

This notice is published in accordance with section 751(b)(1) of the Act and 19 C.F.R. 351.216 and 351.222.

Dated: July 16, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–18448 Filed 7–19–02; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–824]**

### Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order

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

**ACTION:** Notice of final results of changed circumstances review, and revocation in part of antidumping duty order

**SUMMARY:** On June 7, 2002, the Department of Commerce (''the Department'') published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order and Intent to Revoke Order in Part,* 67 FR 39345 (June 7, 2002) (''*Initiation and Preliminary Results*''). In our *Initiation and*

*Preliminary Results,* we gave interested parties an opportunity to comment; however, we did not receive any comments. We are now revoking this order, in part, with respect to the particular carbon steel flat products described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to these particular carbon steel flat products.

**EFFECTIVE DATE:** July 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3207.

*The Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2002).

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 6, 2002, Mitsubishi International Steel Inc. (''MISI'') requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, MISI requested that the Department revoke the order with respect to imports meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet (''CRBG'') with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004'' (0.10mm) to 0.030'' (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/ − 0.2; Lankford value = ≥ 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) Nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold

rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥1.0 micrometer.

On May 14, 2002, domestic producers of the like product, Bethlehem Steel Corporation; National Steel Corporation; and United States Steel Corporation, informed the Department that they have no interest in the importation or sale of steel from Japan with these specialized characteristics. Subsequently, as noted above, we gave interested parties an opportunity to comment on the *Initiation and Preliminary Results.* We received no comments from interested parties.

**New Scope Based on Changed Circumstances Review**

The merchandise covered by this changed circumstances review is certain corrosion-resistant carbon steel flat products from Japan. This changed circumstances administrative review covers all manufacturers/exporters of carbon steel flat products meeting the specifications as noted above in the background section. The new scope of this order is as follows: the products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.

Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900–990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also, excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under

8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Also excluded from this order are products meeting the following specifications: (1) Diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet (''CRBG'') with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004″ (0.10mm) to 0.030″ (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32–55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85–150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/− 0.2; Lankford value = ≥ 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) Nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side : nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to

create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥1.0 micrometer.

**Final Results of Review; Partial Revocation of Antidumping Duty Order**

The affirmative statement of no interest by petitioners concerning carbon steel flat products, as described herein, constitutes changed circumstances sufficient to warrant partial revocation of this order. Also, no party commented on the *Initiation and Preliminary Results.* Therefore, the Department is partially revoking the order on certain corrosion-resistant carbon steel flat products from Japan with regard to products which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(d). We will instruct the U.S. Customs Service (''Customs'') to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, and not subject to final results of an administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222.

This notice serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216(e) and 351.222(g) of the Department's regulations.

Dated: July 16, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 02–18449 Filed 7–19–02; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 071002A]**

### Marine Mammals; Notice of Intent to Prepare an Environmental Impact Statement for a Take Reduction Plan for the Western North Atlantic Coastal Stock of Bottlenose Dolphins

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

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS); request for comments.

**SUMMARY:** NMFS announces its intention to prepare an EIS, in accordance with the National Environmental Policy Act, for the development of a Bottlenose Dolphin Take Reduction Plan (BDTRP) to reduce the incidental mortality and serious injury of the Atlantic coastal stock of bottlenose dolphins in commercial fisheries to below the potential biological removal (PBR) level for the stock. The purpose of this action is to solicit public comments on the scope of the issues to be addressed in the EIS.

**DATES:** Comments on the scope of the EIS must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time August 21, 2002.

**ADDRESSES:** Send comments on the scope of the EIS to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, Attn: Bottlenose Dolphin EIS. Comments may also be sent via facsimile to 301–713–0376. NMFS will not accept comments submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Katie Moore, NMFS Southeast Region, phone: 727–570–5312, e-mail: *Katie.Moore@noaa.gov*; or Emily Menashes, NMFS Office of Protected Resources, phone: 301–713–2322, e-mail: *Emily.Menashes@noaa.gov*. 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:**

**Electronic Access**

For additional information on Atlantic coastal bottlenose dolphins, refer to the draft 2002 Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Reports (SARs). The reports can be accessed via the internet at: *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html.*

**Background**

NMFS intends to develop and implement a BDTRP pursuant to section 118(f) of the Marine Mammal Protection Act (MMPA). The purpose of the proposed action is to reduce the incidental mortality and serious injury of the Atlantic coastal stock of bottlenose dolphins in commercial fisheries to below the PBR level for the stock. The BDTRP will address mortality and serious injury of Atlantic coastal bottlenose dolphins incidentally taken in the following Category II commercial fisheries: Mid-Atlantic coastal gillnet; North Carolina inshore gillnet; Southeast Atlantic gillnet; Southeastern U.S. Atlantic shark gillnet; Atlantic blue crab trap/pot; Mid-Atlantic haul/beach seine; North Carolina long haul seine; North Carolina roe mullet stop net; and Virginia pound net.

Section 118(f) of the MMPA requires NMFS to convene a take reduction team to assist in the recovery and prevent the depletion of each strategic stock that interacts with Category I or II fisheries. The western North Atlantic coastal stock of bottlenose dolphins is a strategic stock. More information about the stock is available in the draft 2002 SAR, which can be obtained via the internet (see ELECTRONIC ACCESS) or by contacting Katie Moore or Emily Menashes (see **FOR FURTHER INFORMATION CONTACT**). Strategic status was initially assigned because the stock is designated as depleted under the MMPA as a result of a large-scale mortality event that occurred in 1987–1988 (58 FR 17789, April 6, 1993). However, the stock also qualifies as strategic because mortality and serious injury of this stock incidental to commercial fishing exceeds the PBR level of the stock.

The immediate goal of a take reduction plan for a strategic stock of marine mammals is to reduce, within 6 months of plan implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to levels

less than the PBR level. The long-term goal of the plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans.

The Secretary of Commerce (Secretary) may establish a take reduction team to address mortality or serious injury of strategic stocks of marine mammals interacting with Category I or II fisheries. Not later than 6 months after the date of establishment of a take reduction team, the team is required to submit a draft take reduction plan for such stock to the Secretary, consistent with the other provisions of section 118 of the MMPA. The Secretary is required to take the draft take reduction plan submitted by the team into consideration and publish in the Federal Register a summary of the draft plan submitted by the team, any changes proposed by the Secretary with an explanation of the reasons therefore, and proposed regulations to implement such plan, for public review and comment.

**Public Scoping Process**

The Bottlenose Dolphin Take Reduction Team (Team) was established on November 7, 2001. A **Federal Register** notification announcing the convening of the Team and their first meeting was published on October 24, 2001 (66 FR 53782). The Team met a total of five times before delivering consensus recommendations for the BDTRP to NMFS on May 7, 2002. The dates of the five meetings were: November 7–8, 2001, January 23–25, 2002, February 27–March 1, 2002, March 27–28, 2002, and April 23–25, 2002. Team meetings were open to the public and a public comment period was held following each day of meetings. Additionally, NMFS held three public meetings with potential Team members and other interested members of the public on May 15–16, 2001, July 11–12, 2001, and November 6, 2001. No additional scoping meetings are scheduled. This document provides additional opportunity for public involvement in the scope of the issues to be addressed in the EIS.

NMFS hired a commercial fisheries liaison to involve potentially affected sectors of the commercial fishing industry in the Team process by providing information about the purpose of the Team, meeting dates and locations, and discussion topics for upcoming meetings. The liaison used dockside visits, commercial fishing publications, and a commercial fishing expo to disseminate the information. NMFS generated and distributed a fact sheet about the Team and upcoming Team meetings and used mail and electronic mail to distribute information about meeting logistics and summaries to over 200 interested persons.

**Analysis of Alternatives**

NMFS will be analyzing alternatives that are reasonably expected to reduce mortality and serious injury of Atlantic coastal bottlenose dolphins to less than the PBR level within 6 months of implementation of the BDTRP. NMFS will be analyzing all reasonable alternatives, which include a status quo alternative and the recommendations submitted by the Team. The Team's recommendations can be obtained by contacting Katie Moore or Emily Menashes (see **FOR FURTHER INFORMATION CONTACT**).

Dated: July 15, 2002.

**Wanda L. Cain,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 02–18443 Filed 7–19–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Notice of Area the Public Is Requested To Temporarily Avoid During Coral Reef Restoration Activities in the Florida Keys National Marine Sanctuary

**AGENCY:** National Marine Sanctuaries Program (NMSP), Office of Ocean and Coastal Resources Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of area to be temporarily avoided.

**SUMMARY:** NOAA requests that users of the Florida Keys National Marine Sanctuary (FKNMS) avoid, from June 28, 2002 through August 15, 2002, an area of approximately 0.58 acres marked by construction buoys in the vicinity of 25° 0.67′ N, 80° 22.37′ W, which is at ''Molkasses Reef'' and is located 6 nautical miles (11.1 km) off the southeastern portion of Key Largo, Florida. Avoidance was previously requested for the same region from May 15, 2002 through June 28, 2002. Due to unusual weather conditions, the work was not able to be completed. During the time of avoidance, NOAA and authorized contractors will be conducting physical restoration activities of a coral reef where the M/V Wellwood grounded in August 1984. The public is requested to avoid the area during this period due to the presence of heavy construction materials and equipment (*e.g.,* barges and cranes), avoid the area during this period due to the presence of heavy construction materials and equipment (*e.g.,* barges and cranes), moorings, surface air supply hoses of divers and increased localized boat traffic. The intent of this notice is to ensure the timely and successful completion of the restoration and the protection of life and property during these complex activities.

**DATES:** The public is requested to avoid the area from June 28, 2002 through August 15, 2002. If less or more time is needed, NOAA will so inform the public. Public notice of this request also will be provided through local news media, a Notice to Mariners, and posting of placards or bulletin boards in public areas in Key Largo.

**FOR FURTHER INFORMATION CONTACT:** Harriet Sopher, Program Manager, Resource Protection Team, National Marine Sanctuaries Program, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 11th Floor, Silver Spring, Maryland, 20910. Telephone number: 301–713–3125, ext. 109.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 4, 1984, the M/V Wellwood, a 122-meter Cypriot-registered freighter, ran aground on the upper forereef of Molasses Reef within the FKNMS. The grounding site is a bank reef located 6 nautical miles (11.1 km) off the southeast portion of Key Largo, Florida (centered at approximately 25°0.67′ N, 80°22.37′ W). The impact of the grounding and the shifting of the vessel created large scars on the Molasses Reef forereef. Significant injuries were inflicted to the coral reef colonies, substrate, and other resident marine organisms such as sponges and sea fans. The unconsolidated coral rubble and ship debris have been removed. Storm events, including Hurricane Georges in the autumn of 1998, have caused additional damage to the grounding site.

Section 312 of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1443) authorizes NOAA to pursue claims for response costs and damages when sanctuary resources are destroyed, lost

or injured. Funds recovered under 312 are used to restore, replace or acquire equivalent sanctuary resources. As part of the restoration process at the site of the M/V Wellwood grounding, NOAA and its authorized contractor will be placing reef modules and tremie concrete to rebuild the physical structure of the damaged coral reef. This activity will occur from April 15, 2002 through August 15, 2002.

Because divers, moorings, heavy construction materials and equipment (e.g., barges and cranes) and increased localized boat traffic will be present during the restoration activity, NOAA requests the public to avoid an area of approximately 0.58 acres where the restoration activity will occur. Five to seven, recreational mooring buoys will be removed from the work area and the nearby vicinity. The work area will be marked by construction buoys. The buoys will be set about 30 feet beyond the barge tie down locations, and create an area approximately 200 feet by 150 feet, with the longer axis oriented in a NE–SW direction, around the grounding site (25°0.67′ N, 80°22.37′ W). The intent is to provide an area for the conduct of these important restoration activities; protect the life and property of construction crews and Sanctuary users while heavy construction materials and equipment (*e.g.,* barges and cranes) are in the area; protect moorings which will be used at the site of stabilize the barges; protect the surface air supply hoses of the divers and SCUBA crew who will be conducting the restoration activities; and ensure timely and successful completion of the restoration. The area that the public is requested to avoid is the minimum area necessary to moor the barges and includes buffer zones to moor support vessels and provide an extra margin for public safety during the restoration activities. The time period for which the public is requested to avoid the restoration site is the expected time necessary to complete the construction activities. If less or more time is needed, NOAA will so notify the public. During the spring of 2002, one-on-one contact was made with local dive operators, a public meeting was held to explain the restoration project and make the public aware of the area it would be requested to temporarily avoid. Additionally, NOAA issued press releases to the local newspapers and radio stations which have covered the restoration planning process and which have provided notice of NOAA's request for the public to avoid the restoration area.

**Locations and Boundaries of the Area the Public Is Requested To Avoid**

The area which the public is requested to avoid is located approximately 6 nautical miles offshore the southeast portion of the Key Largo, Florida (centered near 25° 0.67′ N, 80° 22.37′ W). The total area is approximately 0.58 acres. The boundary of this area will be marked by construction buoys.

The area is bounded by the following coordinates:

| Latitude | Longitude |
|---|---|
| A: 25°00′ 37.96364″N | 80°22′ 14.60425″W |
| B: 25°00′ 31.20173″N | 80°22′ 22.54159″W |
| C: 25°00′ 45.20646″N | 80°22′ 22.02476″W |
| D: 25°00′ 38.44445″N | 80°22′ 29.96212″W |

Dated: July 16, 2002.

**Jamison S. Hawkins,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 02–18446 Filed 7–19–02; 8:45 am]

**BILLING CODE 3510–NK–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Public Scoping Period for the Proposed Designation of the Northwestern Hawaiian Islands National Marine Sanctuary; Reopening of Comment Period

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice; request for comment; re-opening of comment period.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is re-opening, until August 6, 2002, the period for submission of public comments on the proposed designation of the Northwestern Hawaiian Islands National Marine Sanctuary.

**DATES:** Comments on the proposed designation must be received by close of business August 6, 2002.

**ADDRESSES:** Written comments may be sent to NWHI Coral Reef Ecosystem Reserve, 6700 Kalanianaole Highway, #215, Honolulu, Hawaii 96825; faxed to (808) 3972662; or emailed to *nwhi@noaa.gov.* Comments will be available for public review at the office address above.

**FOR FURTHER INFORMATION CONTACT:** Aulani Wilhelm, (808) 397–2657, *nwhi@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** On December 4, 2000, Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Amendments Act of 2000. The Reserve extends approximately 1200 nautical miles long and 100 nautical miles wide. Pursuant to this Act and the Executive Order, NOAA initiated the process to designate the Reserve as a national marine santuary by issuing a notice of intent on January 19, 2001 (66 FR 5509). The public scoping period was announced on March 18, 2002 (67 FR 11996), with a closing date of May 3, 2002. The close of the public scoping period was extended to May 17, 2002 (67 FR 17673). Because of continuing public interest as indicated by the number of comments received during and after the comment period, NOAA is re-opening the comment period until August 6, 2002. Any comments that may have been received between May 17, 2002 and July 22, 2002, will be considered timely filed.

**Authority:** 16 U.S.C. 1431 *et seq.,* Pub. L. 106–513, (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: July 16, 2002.

**Jamison S. Hawkins,**

*Deputy Assistant Administrator, for Ocean Services and Coastal Zone Management.*

[FR Doc. 02–18447 Filed 7–19–02; 8:45 am]

**BILLING CODE 3510–08–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 071602A]**

### Marine Mammals; File No. 1034–1685 and Permit No. 751–1614

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

**ACTION:** Receipt of application for a permit and application to amend a permit.

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of marine mammals for purposes of scientific research: NMFS has received a permit application from Dr. Markus Horning, Department of Marine Biology, Texas A&M University, Galveston, TX 77551, to take California sea lions (*Zalophus californianus*); and an application to amend Permit No. 751–1614 issued to the Ocean Alliance/ Whale Conservation Institute, 191

Weston Road, Lincoln, MA 01773 (Dr. Roger S. Payne, Principal Investigator).

**DATES:** Written or telefaxed comments must be received on or before August 21, 2002.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

For both applications, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

For File No. 1034–1685, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

For Permit No. 751–1614, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

For Permit No. 751–1614, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

**FOR FURTHER INFORMATION CONTACT:** Tammy Adams, Ruth Johnson, or Amy Sloan, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit, File No. 1034–1685, is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). The subject amendment to Permit No. 751–1614 is requested under the authority of the MMPA, the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the ESA, and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant for File No. 1034–1685 proposes to implant dual satellite-linked life history transmitters in up to 15 rehabilitated California sea lions at the Marine Mammal Center per year, for two years, to determine long-term post-release survival rates of rehabilitated sea lions. External tags will also be attached for short-term monitoring. To assess stress levels from surgical procedures, and to relate post-rehabilitation health status to survival, blood samples will be collected for standard clinical hematology and chemistry panels. Blubber biopsies, bioelectric impedance analysis, deuterium dilution determinations, and blubber ultrasound will also be performed.

Permit No. 751–1614, issued on March 7, 2002 (67 FR 11677) authorizes takes of various cetacean species by aerial survey, photo-identification, and biopsy sampling, within waters under the jurisdiction of the United States or on the high seas of the Pacific, Atlantic, and Indian Oceans, and the Mediterranean Sea. It also authorizes the import/export of an unlimited number of samples (sloughed skin from live animals, and skin, blubber, blood, bone, baleen and other tissues collected from dead stranded animals) collected within the territorial waters of a number of foreign countries. The holder of Permit No. 751–1614 has requested authorization to import and export samples collected from the cetacean species listed in the permit within the territorial waters of any foreign country sanctioned by the United States and in accordance with the permit conditions.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 16, 2002.

**Eugene T. Nitta,**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 02–18441 Filed 7–19–02; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 071202B]**

### Marine Mammals; File No. 779–1681

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

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that NMFS Southeast Fisheries Science Center (SEFSC), (Dr. Aleta Hohn, Principal Investigator), 75 Virginia Beach Drive, Miami, FL 33149, has applied in due form for a permit to take bottlenose dolphins for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before August 21, 2002.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978)281–9200; fax (978)281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubard or Ruth Johnson, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*)and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The SEFSC requests a Permit to take bottlenose dolphins (*Tursiops truncatus*) for scientific research. The impetus for the research is the need to define the stock structure of western North Atlantic bottlenose dolphins. The project is a continuation of research begun in 1997 to elucidate stock structure using multiple methods and to test the hypothesis of one coastal migratory stock of bottlenose dolphins along the Atlantic coast of the U.S. A maximum of 500 individual dolphins will be captured, examined, sampled, marked, and released during the 5 year

period of the permit. Captures will take place in inshore and nearshore waters from New York to the Texas/Mexico border. As part of the research, the captured bottlenose dolphins will be sampled for genetic and isotope analyses, photographed for photo-id and will have transmitters attached.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 16, 2002.

**Eugene T. Nitta,**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 02–18442 Filed 7–19–02; 8:45 am]

**BILLING CODE 3510–22–S**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Notice Concerning Request for Public Input on 2003 Administrative and Program Guidance

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the ''Corporation'') is requesting input from the public concerning the 2003 program and administrative guidance that will be issued in October, 2002. This guidance will set forth the policies, procedures, and timelines that govern the allocation of resources in fiscal year 2003, and covers all organizations that may apply for support under the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1973, as amended. This guidance will set requirements upon organizations applying for funds, and provide the criteria that will be used in evaluating applicants. The Corporation invites input on any topic covered by these guidelines, including items such as: preferences for funding; sustainability; and accountability measures. Please note that this Notice does not request comments on individual application forms used under the various programs of the Corporation. The Corporation periodically publishes separate requests for comments concerning such application forms. By way of example, please refer to the Corporation's Application Guidelines for 2002 at *http://www.americorps.org/resources/guidelines2002.html.*

**DATES:** To be considered, input must arrive at the Corporation no later than 5 p.m., Eastern Standard Time, on August 26, 2002.

**ADDRESSES:** Any input must be submitted to the Corporation at the following address: (a) via e-mail to *gkowalczyk@cns.gov;* or (b) via fax to Gary Kowalczyk at 202–565–2784; or (c) via letter, to: Corporation for National and Community Service, Attn: Gary Kowalczyk, 1201 New York Avenue NW., Washington, DC 20525. Due to continued delays in the Corporation's receipt of mail, individuals are strongly encouraged to respond via e-mail or fax. This notice may be requested in an alternative format for the visually impaired.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact either Gary Kowalczyk at 202–606–5000 x340 (*gkowalczyk@cns.gov*) or Nancy Talbot at 202–606–5000 x470 (*ntalbot@cns.gov*). The TDD number is 202–565–2799.

Dated: July 17, 2002.

**Gary Kowalczyk,**

*Coordinator, National Service Programs.*

[FR Doc. 02–18450 Filed 7–19–02; 8:45 am]

**BILLING CODE 6050–$$–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Air Force Space Command

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Amendment of the notice of intent to prepare an Environment Impact Statement for actions to sustain operability of Air Force Space Command early warning radar sites at Cape Cod Air Force Station (AFS), Massachusetts (MA); Beale Air Force Base (AFB), California (CA); and Clear AFS, Alaska (AK).

**SUMMARY:** The Air Force hereby amends its notice of intent to prepare an Environmental Impact Statement (EIS) for Service Life Extension Program (SLEP) action at the Early Warning Radars located at Cape Cod AFS, MA; Beale AFB, CA; and Clear AFS, AK, as published in 65 FR 4406, published 27 January 2000. The Air Force intends to prepare a Supplemental EIS to the 1979 EIS on the Operation of the PAVE PAWS Radar System at Otis AFB, MA. The Supplemental EIS will address concerns over the possible health effects from operation of the early warning radar at Cape Cod AFS. The Supplemental EIS will be prepared pursuant to section 1502.9(c) (2) of the Council on Environmental Quality regulations and will include, among other information, the results from ongoing studies and efforts that are addressing concerns related to radio frequency energy (RFE) from the radar. These studies and efforts include a National Research Council study; an RFE survey at Cape Cod, MA; an exposure assessment using the results of the RFE survey; a waveform characterization study; and a review conducted by the Armed Forces Epidemiology Board. The Air Force made the decision to prepare a Supplemental EIS following a review of the SLEP EIS process. The review was prompted by the decreasing availability of spare parts for the early warning radars and increasing concern that the radars were becoming unsupportable due to a lack of spare parts. Through the review process, which took into account comments received during public scoping meetings, the Air Force determined that public concerns centered around the possible health effects arising from operation of the radars, rather than from the proposed action of replacing outdated computer hardware and rehosting software. Replacing computer hardware and rehosting software will not change the amount or characteristics of the radio frequency energy being transmitted by the radar. Based on present calculations, which may change, the Air Force anticipates releasing a draft Supplemental EIS in 2004, approximately six months after the results from the last of the studies is scheduled to be published. The Air Force will prepare site-specific

environmental assessments (EAs) for the SLEP actions of replacing computer hardware and rehosting software at each of the three early warning radar sites. Notices will be published in local newspapers when the EAs are available for public review.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Novak, HQ AFSPC/CEVP, 150 Vandenberg Street, Suite 1105, Peterson Air Force Base, CO 80914–2370, Fax 719–554–3849.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 02–18363 Filed 7–19–02; 8:45 am]

**BILLING CODE 5001–05–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the 2001 S&T Review. The purpose of the meeting is to allow the SAB and study leadership to brief the Chief of Staff and Secretary of the Air Force on the results of their study. Because sensitive and contractor-proprietary information will be discussed, this meeting will be closed to the public.

**DATES:** August 6, 2002.

**ADDRESSES:** 4E869.

**FOR FURTHER INFORMATION CONTACT:** Major John Pernot, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

**Pamela D. Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 02–18364 Filed 7–19–02; 8:45 am]

**BILLING CODE 5001–05–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Invention; Available for Licensing

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 5,918,680 entitled ''Water Spray Cooling System for Extinguishment and Post Fire Suppression of Compartment Fires'', Navy Case No. 77,714.

**ADDRESSES:** Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Ave, SW., Washington, DC 20375–5320, and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: July 15, 2002.

**R.E. Vincent II,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 02–18336 Filed 7–19–02; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### President's Advisory Commission on Educational Excellence for Hispanic Americans

**AGENCY:** President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

**DATE AND TIME:** Tuesday, August 6, 2003, from 8 a.m. to 4 p.m.

**ADDRESSES:** The Commission meeting will be held in San Diego, California, at the Westgate Hotel located at 1055 Second Avenue, San Diego, CA 92101.

**FOR FURTHER INFORMATION CONTACT:** Leslie Sanchez, Executive Director, or Adam Chavarria, Associate Director, White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Ave., SW., Washington, DC 20202, (202) 401–1411.

**SUPPLEMENTARY INFORMATION:** The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 13230 dated October 12, 2001. The Commission is established to provide advice to the Secretary of Education (Secretary) and issue reports to the President concerning: (a) The progress of Hispanic Americans in closing the academic achievement gap and attaining the goals established by the President's No Child Left Behind Act of 2002; (b) the development, monitoring, and coordination of Federal efforts to promote high-quality education for Hispanic Americans; (c) ways to increase parental, State and local, private sector, and community involvement in improving education; and (d) ways to maximize the effectiveness of Federal education initiatives within the Hispanic community.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Adam Chavarria at (202) 401–1411 by no later than July 31. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

At the meeting on Tuesday, August 6, the Commission will review comments and adopt changes to the Interim Report from 8 a.m. to 4 p.m.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans from the hours of 9 a.m. to 5 p.m.

Dated: July 10, 2002.

**Rod Paige,**

*Secretary, U.S. Department of Education.*

[FR Doc. 02–18335 Filed 7–19–02; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### Draft Report Implementing Office of Management and Budget Information Dissemination Quality Guidelines

**AGENCY:** Office of the Chief Information Officer, Department of Energy (DOE).

**ACTION:** Notice and request for comment.

**SUMMARY:** DOE invites public comment on a draft report to the Office of

Management and Budget (OMB) that contains draft DOE guidelines setting forth policy and procedures to ensure and maximize the quality, utility, objectivity, and integrity of the information that DOE disseminates to members of the public. DOE has prepared this draft report pursuant to OMB government-wide guidelines under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Act) (Pub. L. 106–554, 114 Stat. 2763).

**DATES:** Public comments are due August 21, 2002.

**ADDRESSES:** Comments should be sent by regular mail or electronic mail. To ensure receipt of comments by the due date, DOE recommends submission by electronic mail to the Office of the Chief Information Officer, Attention: DOE Quality Guidelines Review at *cio.webmaster@hq.doe.gov*. Comments sent by regular mail should be addressed to: Office of the Chief Information Officer, Attention: DOE Quality Guidelines Review, U.S. Department of Energy, Forrestal Building—Room 8H–089, 1000 Independence Avenue NW., Washington, DC 20585, or via Fax to (202) 586–7966.

**FOR FURTHER INFORMATION CONTACT:** Office of the Chief Information Officer, Attention: Ms. Deborah Henderson, at the electronic and regular mail addresses provided above. The draft DOE report and guidelines in this notice are available on the DOE CIO Web site at *http://cio.doe.gov/informationquality*.

**SUPPLEMENTARY INFORMATION:** The draft report and guidelines in this notice are in response to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (OMB guidelines), 67 FR 8452 (February 22, 2002) under section 515 of the Act. DOE's draft guidelines would apply to a wide variety of information disseminated to members of the public. The DOE draft guidelines are modeled on the OMB guidelines with modifications specific to DOE. The principal modifications with explanations, are as follows:

1. DOE inserted the definitions before the operative portions of its draft guidelines, and in order to enhance readability, opted to relocate some of the language in the OMB definitions (namely, that which provided policy as distinguished from strictly definitional material) among the operative sections of guidelines.

2. DOE included general pre-dissemination review procedures which would provide for the originating DOE office to review information in light of the quality standards in the OMB and DOE guidelines and, in appropriate cases, for higher level internal review of the originating office's conclusions to ensure that the procedures are followed.

3. DOE opted to propose its own definition of ''influential'' when that term is applied to financial, scientific, or statistical information. Under the OMB guidelines, ''influential'' information of that type is supposed to meet the highest standards of transparency (consistent with countervailing considerations such as confidentiality) and data must be capable of reproduction by a qualified individual outside of the agency. DOE proposes to define ''influential information'' as information that DOE routinely embargoes because of its potential effect on markets, information on which a regulatory action with a $100 million per year impact is based, and other information products on a case-by-case basis. Routine embargo information occurs with regard to certain of the information products of DOE's Energy Information Administration. Currently, only some of the appliance energy conservation standards rulemakings under the Energy Policy and Conservation Act (42 U.S.C. 6295) have $100 million impacts on the economy. While DOE is committed to maintaining high standards of quality for all its information products aimed at the public, DOE is not of the view that the impact of other information products warrants holding them to the most rigorous standards of transparency and reproducibility.

4. DOE proposes mandatory procedures, including content requirements, to be followed by members of the public in submitting requests for correction of information under the Guidelines. With respect to information related to DOE actions subject to public comment, members of the public generally would be required to submit requests for correction in the form of timely comments made through the comment process. With respect to DOE actions that are not subject to public comment, members of the public would be required to submit requests for correction to the DOE CIO who would direct the request to the originating DOE program office. That office should provide at least an initial response within 60 days. A member of the public could request review of an adverse response to the DOE CIO. The CIO would direct the request for review to a higher level official of the DOE program office to whom the originating program office reports for a final decision within 60 days.

In addition to the four foregoing points, DOE is considering whether, consistent with the OMB guidelines (67 FR 8460), to add a variation to the portion of the DOE guidelines calling for use of the criteria in the Safe Drinking Water Act Amendments of 1996 (42 U.S.C 300g–1(b)(3)(A) and (B)) in the preparation of risk assessments. The possible adaptation would be to add a variation of the Safe Drinking Water Act criteria for ecological risk assessments which may not involve health and medical information. More specifically, DOE is considering adding the following provision on ecological risk assessment procedures to its guidelines:

''1. To the degree that a DOE Element's action is based on science, the DOE Element should use:

a. The best available peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices to evaluate adverse effects to local populations or communities of affected biota; and

b. Data collected by accepted methods (if the reliability of the method and the nature of the decision justifies use of the data), including, where feasible, site-specific data.

2. In the dissemination of public information about risks, the DOE Element should ensure that the presentation of information about risk effects is comprehensive, informative, and understandable.

3. In a document made available to the public, the DOE Element should specify, to the extent practicable:

a. Each population addressed by any estimate of applicable risks;

b. The expected risk or central estimate of risk for the specific populations affected;

c. Each appropriate upper-bound or lower-bound estimate of risk developed through probabilistic risk assessment techniques where feasible;

d. Each significant uncertainty identified in the process of the assessment of risk effects and the studies that would assist in resolving the uncertainty; and

e. Peer-reviewed studies known to the DOE Element that support, are directly relevant to, or fail to support any estimate of risk effects and the methodology used to reconcile inconsistencies in the scientific data, including, where feasible, a weight of the evidence analysis and causation criteria analysis.''

DOE particularly invites comments on its draft guideline provisions reflecting the four points discussed above; DOE also invites comments on the advisability of adopting the ecological

risk assessment language set forth above.

DOE plans to review all relevant comments submitted in response to its draft guidelines and will respond to the major issues they raise. Publication of a final report to OMB is due on October 1, 2002.

Issued in Washington, DC on July 16, 2002.

**Karen S. Evans,**

*Chief Information Officer.*

**Draft Report to the Office of Management and Budget on Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Energy**

**Introduction**

This report is submitted to the Office of Management and Budget, (OMB) by the Department of Energy (DOE) pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (OMB guidelines), 67 FR 8452 (February 22, 2002) under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, 114 Stat. 2763). The report includes DOE's guidelines to implement the policies and procedural guidance set forth in the OMB guidelines.

**Background**

DOE is responsible for the administration of a wide variety of national defense, energy supply, energy conservation, and nuclear waste cleanup programs authorized by law. DOE administers a system of national laboratories with active scientific research programs. DOE also disseminates a large volume of statistical reports through its Energy Information Administration. Although DOE is not a major regulatory agency, DOE has some rulemaking mandates and authorities, such as the appliance energy conservation program of test procedures and standards, that require the dissemination of financial, scientific, and statistical information. Like other agencies, DOE publishes draft and final environmental impact statements and environmental assessments under the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.* to 4370d.

**Discussion of Guidelines**

DOE has always maintained high standards of quality in the production of information disseminated to members of the public. As a source of scientific and statistical information on which members of the public and other government officials rely, DOE has long had procedures to assure adequate information quality. DOE's Energy Information Administration is a leader in this regard and has elaborate procedures to ensure the quality of its information products. DOE's Office of Energy Efficiency and Renewable Energy has elaborate special procedures for some of its rulemakings. That office has codified a general statement of policy in Appendix A to Subpart C of 10 CFR part 430 with regard to its information quality review procedures for information used in its appliance energy conservation standards rulemakings.

The DOE guidelines set forth below are modeled on OMB guidelines and incorporate a basic standard of quality (including objectivity, utility, and integrity) in the development and dissemination of DOE or DOE-sponsored information to the public. They also incorporate the procedures that DOE has traditionally followed to review information products for adequate quality. In addition, the DOE guidelines provide a uniform set for procedures for members of the public who wish to request correction of information on a timely basis. These procedures will ensure that final DOE decisions with respect to requests for correction will be made by high-level management officials.

In DOE's view, section 515 of the Act requires procedures and performance goals for the internal management of the Executive Branch. Although the draft DOE guidelines provide procedures by which a member of the public may request correction of information DOE has disseminated, they are not intended to result in DOE actions that are subject to judicial review. Rather, section 515(b)(2)(C) contemplates that each agency shall ''report periodically to the Director'' of OMB concerning ''(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and (ii) how such complaints were handled by the agency.''

The DOE Guidelines were prepared by the DOE Chief Information Officer, who is responsible for coordinating DOE's response to OMB's guidelines, in cooperation with other affected DOE offices.

**Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated to the Public by the Department of Energy**

*I. Background*

Section 515, Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554), directed the Office of Management and Budget (OMB) 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.'' The OMB guidelines, published in the **Federal Register** on February 22, 2002 (67 FR 8452), require agencies to issue by October 1, 2002, their own implementing guidelines that include administrative mechanisms allowing members of the public to seek and obtain correction of information disseminated by the agency that does not comply with the agency guidelines.

The Department of Energy (DOE) Information Quality Guidelines, issued by the Department's Chief Information Officer (CIO) pursuant to OMB's Guidelines, are intended to provide guidance to Departmental Elements ( *i.e.,* major DOE offices) on maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated to the public.

The DOE Guidelines also establish mechanisms for members of the public to seek and obtain administrative correction of disseminated information that does not comply with the quality requirements of these Guidelines. Finally, the Guidelines explain how the CIO will comply with OMB's annual reporting requirement concerning complaints from members of the public.The DOE Information Quality Guidelines will become effective on October 1, 2002.

*II. Introduction*

The CIO has designed these Guidelines to apply to a wide variety of DOE information dissemination activities that may range in importance and scope. They are intended to be sufficiently generic to fit all media, printed, electronic, or other forms. The CIO has sought to avoid the problems that would be inherent in developing detailed, prescriptive, ''one-size-fits-all'' DOE-wide guidelines that would artificially require different types of dissemination activities to be treated in the same manner.

The Guidelines are designed so that DOE Elements can apply them in a common sense and workable manner. It is important that these guidelines not impose unnecessary administrative burdens that would inhibit DOE Elements from continuing to take advantage of the Internet and other technologies to disseminate information to the public. In this regard, DOE Elements may incorporate the standards and procedures required by these guidelines into their existing information resources management and administrative practices rather than create new and potentially duplicative or contradictory processes. DOE Elements may rely on their implementation of the computer security provisions of the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 *et seq.*, to establish appropriate security safeguards for ensuring the integrity of the information that they disseminate.

*III. DOE Information Quality Guidelines*

A. What Definitions Apply to These Guidelines?

1. *DOE Element* means a major DOE office headed by an official whose position is subject to Senate confirmation or an office which directly reports to the Secretary, Deputy Secretary, or either of the DOE Under Secretaries.

2. *Dissemination* means DOE Element initiated or sponsored distribution of information to the public.

3. *Influential* means, when used in the context of scientific, financial, or statistical information, information (1) that is subject to embargo until the date of its dissemination by the Department or DOE Element disseminating the information because of potential market effects; (2) that is the basis for a DOE action that may result in an annual effect on the economy of $100 million or more; or (3) that is designated by a DOE Element as ''influential.''

4. *Information* means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms, including information that a DOE Element disseminates from a web page, but excluding the provision of hyperlinks to information that others disseminate.

5. *Information dissemination product* means any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, a DOE Element disseminates to the public, including any electronic document, CD–ROM, or Web page.

6. *Integrity* means the information has been secured and protected from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

7. *Objectivity* means the information is presented in an accurate, clear, complete, and unbiased manner and the substance of the information is accurate, reliable, and unbiased.

8. *Quality* means utility, objectivity, and integrity.

9. *Reproducibility* means capability of being substantially reproduced, subject to an acceptable degree of imprecision, and with respect to analytical results, ''capable of being substantially reproduced'' means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.

10. *Subject to public comment* means that DOE has made the information available for comment by members of the public, preliminary to making a final determination, through a notice in the **Federal Register** including, but not limited to, a notice of inquiry, an advance notice of proposed rulemaking, a notice of proposed rulemaking, a notice reopening or extending a comment period due to receipt of new information, a notice of availability of a draft environmental impact statement, or any other **Federal Register** notice that provides an opportunity for comment by members of the public regarding information on which a final adjudicatory determination may be based.

11. *Transparent* means clear and concise

12. *Utility* means the usefulness of the information to its intended users, including the public.

B. Which Public Disseminations of Information Are and Are Not Subject to These Guidelines?

These Guidelines apply to any public dissemination of information. The definitions of ''information'' and ''dissemination'' establish the scope of the applicability of the guidelines. ''Information'' means ''any communication or representation of knowledge such as facts or data.'' Consequently, ''information'' does not include opinions.

''Dissemination'' is defined to mean agency initiated or sponsored distribution of information to the public,'' including, for example, a risk assessment prepared by a DOE Element to inform the agency's formulation of possible regulatory or other action. A DOE Element does not ''initiate'' the dissemination of information when a Federally employed scientist or Federal grantee or contractor publishes his or her research findings, even if the DOE retains ownership or other intellectual property rights because DOE paid for the research. In such cases, to avoid confusion, the DOE Element should ensure that the researcher includes an appropriate disclaimer that the views are the researcher's and do not necessarily reflect the views of DOE. However, if a DOE Element directs a Federally employed scientist or Federal grantee or contractor to disseminate information and retains authority to review and approve the information before release, then the DOE Element has sponsored the dissemination of the information.

''Dissemination'' also does not include the following distributions:

(1) Press releases, including but not limited to fact sheets, press conferences or similar communications in any medium that announce, support the announcement or give public notice of information a DOE Element has disseminated elsewhere;

(2) Any inadvertent or unauthorized disclosure of information intended only for inter-agency and intra-agency communications;

(3) Correspondence with individuals or persons;

(4) Testimony and other submissions to Congress containing information a DOE Element has disseminated elsewhere;

(5) Responses to requests for DOE records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or similar laws;

(6) Information in public filings (such as public comments received by DOE in rulemaking proceedings), except where the DOE Element distributes information submitted to it by a third party in a manner that suggests that the DOE Element endorses or adopts the information, or indicates in its distribution that it is using or proposing to use the information to formulate or support a regulation, guidance, or other DOE Element decision or position.

(7) Information contained in subpoenas or documents filed in adjudicative proceedings, including DOE adjudicatory orders, opinions, amicus and other briefs;

(8) Procedural, operational, policy and internal manuals and memoranda prepared for the management and operation of DOE Elements that are not

primarily intended for public dissemination;

(9) Archival records (including information made available to the public on a DOE web site to document historical DOE actions); and

(10) Communications limited to government employees or DOE contractors or grantees.

C. What Are the Responsibilities of DOE Elements for Ensuring Quality of Information Disseminated to the Public and Responding to Requests From Members of the Public for Correction of Information?

1. *Ensuring quality.* As a guiding principle, DOE Elements should have as a performance goal that information disseminated to the public meets a basic level of quality. The quality of information disseminated by DOE Elements is measured by its utility, objectivity, and integrity. ''Objectivity'' focuses on whether the disseminated information is being presented in an accurate, clear, complete and unbiased manner and as a matter of substance, is accurate, reliable and unbiased. This includes whether the information is presented in the proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation.

Also, DOE Elements should (to the extent possible, consistent with security, privacy, intellectual property, trade secrets, and confidentiality protections) identify the sources of the disseminated information and, in a scientific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where feasible, data should have full, accurate, transparent documentation, and possible sources of error affecting data quality should be identified and disclosed to users.

In addition, ''objectivity'' involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific, financial, or statistical context, the original and supporting data should be generated, and the analytical results developed, using sound statistical and research methods. If the data and analytical results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing by a member of the public seeking correction of information in a particular instance. If DOE Element-sponsored peer review is employed to help satisfy the objectivity standard, the review process employed should meet the general criteria for competent and credible peer review recommended by OMB's Office of Information and Regulatory Affairs to the President's Management Council (*http://www.whitehouse.gov/omb/inforeg/oira_review-process.html*), namely ''that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.''

Influential information. If a DOE Element is responsible for disseminating and disseminates influential scientific, financial information, a high degree of transparency of data and methods should be ensured to facilitate the reproducibility of such information by qualified third parties.

''Influential'' when used in the context of scientific, financial or statistical information, means information: (1) That is subject to embargo until its dissemination by DOE or a DOE Element disseminating the information because of potential market effects; (2) that is the basis for a DOE action that may result in an annual effect on the economy of $100 million or more; or (3) that is designated by a DOE Element as ''influential.''

With regard to original and supporting data related thereto, these Guidelines do not require that all disseminated original and supporting data be subjected to the reproducibility requirement applicable to influential information. DOE Elements may identify, in consultation with the relevant scientific and technical communities, those particular types of data that may practicably be subjected to the reproducibility requirement, given ethical, feasibility, confidentiality, privacy, trade secret, security, and intellectual property constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (*i.e.* a new experiment, test, or sample) should not be required prior to each dissemination. At a minimum, DOE Elements should assure reproducibility for those kinds of original and supporting data according to ''commonly accepted scientific, financial, or statistical standards.''

With regard to analytic results related thereto, DOE Elements generally should demonstrate sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public. These transparency standards apply to analysis of data from a single study as well as to analyses that combine information from multiple studies.

Making the data and models publicly available will assist in determining whether analytical results are capable of being substantially reproduced. However, the objectivity standard does not override other compelling interests such as privacy, trade secret, security, intellectual property, and other confidentiality protections.

In situations where public access to data and methods will not occur due to other compelling interests, DOE Elements should apply rigorous robustness checks to analytic results and document what checks were undertaken. DOE Elements should, however, disclose the specific data sources that have been used and the specific quantitative methods and assumptions that have been employed. However, each DOE Element should define the type of robustness checks and the level of detail for documentation thereof, in ways appropriate for it given the nature and multiplicity of issues for which the DOE Element is responsible.

With regard to the dissemination of information containing analyses of risks to human health, safety and the environment, DOE Elements should either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996. DOE Elements responsible for dissemination of vital health, environmental and medical information should interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information to medical providers, patients, health agencies, and the public. Information quality standards may be waived temporarily by DOE Elements in urgent situations (*e.g.* imminent threats to public health or homeland security).

''Utility'' refers to the usefulness of the information to intended users including the public. In assessing the usefulness of information, DOE Elements need to consider the uses of the information they plan to disseminate not only from their perspective but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's

perspective, DOE Elements should take care to ensure that transparency has been addressed in its review of the information.

''Integrity'' refers to security—the protection of information from unauthorized access or revision to ensure that information by DOE or DOE Elements is not compromised through corruption or falsification.

Pre-dissemination review procedures. Before disseminating information to members of the public, the originating office of the DOE Element must ensure that the information is consistent with the OMB and DOE guidelines and must determine that the information is of adequate quality for dissemination. If the information is influential financial, scientific, or statistical information, then the DOE Element should provide for higher level review of the program office's conclusions. Each DOE Element should identify for the CIO a high ranking official at the rank of at least a deputy assistant secretary who is responsible for ensuring the accountability of the DOE Element's program offices in reviewing information to be disseminated to members of the public under the OMB and DOE guidelines.

As a matter of good and effective information resources management, DOE Elements may develop and post on their websites supplemental guidelines for the process they will follow for reviewing the quality (including objectivity, utility and integrity) of information before it is disseminated. DOE Elements should treat information quality as integral to every step of development of information, including creation, collection, maintenance, and dissemination. This process will enable every DOE Element to substantiate the quality of the information it has disseminated through documentation or other means appropriate to the information.

*Paperwork Reduction Act.* It is important that DOE Elements make use of OMB's Paperwork Reduction Act (PRA) clearance process to help improve the quality of information that the DOE Elements collect and disseminate to the public. DOE Elements already are required to demonstrate in their PRA submissions to OMB the ''practical utility'' of a proposed collection of information the DOE Element plans to disseminate. Additionally, for all proposed collections of information that will be disseminated to the public, DOE Elements should demonstrate in their PRA clearance submissions to OMB that the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with the OMB and DOE information quality guidelines.

2. *Responding to requests from members of the public.* To facilitate public review of information disseminated to the public, these Guidelines provide procedures allowing members of the public to seek and obtain correction of information disseminated to the public that does not comply with the quality provisions of these Guidelines. The procedures, set out in Part IV below, provide separate mechanisms for information set forth or referenced in a DOE or DOE-sponsored document subject to public comment and all other DOE or DOE-sponsored information.

## IV. Requests From Members of the Public for Correction of Publicly Disseminated Data

### A. How Does a Member of the Public Request Correction of Publicly Disseminated Information?

1. *Requests from members of the public seeking correction of DOE or DOE-sponsored documents subject to public comment.* (A) With respect to information set forth or referenced in a DOE or DOE-sponsored document subject to public comment, a member of the public must request correction within the comment period in a comment that:

(1) Specifically identifies the information in question and the document(s) containing the information;

(2) Explains with specificity the reasons why the information is inconsistent with the applicable quality standards in the OMB or DOE guidelines; and

(3) Presents substitute information, if any, with an explanation showing that such information is consistent with the applicable quality standards in the OMB and DOE guidelines.

(B) With respect to information set forth or referenced in a DOE notice of final rulemaking or a final Environmental Impact Statement (and any related Record of Decision), a member of the public may only file a request for correction of information in the form of a petition for rulemaking under 5 U.S.C. 553(e) or a petition for a supplemental environmental impact statement under 10 CFR part 1021, whichever is appropriate.

(C) A member of the public must file a request for correction under this paragraph at the address for comments set forth in DOE's notice providing for public comment.

(D) If the request for correction concerns information in or referenced in a document subject to comment at an early stage of the public comment process (e.g., an advance notice of proposed rulemaking), any response prior to publication of the final document is a preliminary response.

(E) A member of the public who files a request for correction under this paragraph has the burden of proof with respect to the necessity for correction as well as with respect to the type of correction requested.

2. *Requests from members of the public seeking correction of DOE or DOE-sponsored documents not subject to public comment.* (A) With respect to information set forth or referenced in a DOE or DOE-sponsored document that is disseminated or redisseminated on or after October 1, 2002, and is not subject to public comment, a member of the public must request correction by letter to the Office of the Chief Information Officer, Attention: DOE Quality Guidelines, U.S. Department of Energy, Forrestal Building—Room 8H–089, 1000 Independence Avenue NW., Washington, DC 20585, or via Fax to (202) 586–7996, or by filling out the form provided at the CIO Web site: *http://cio.doe.gov/informationquality.* This form will request the information set forth in paragraph (B) below.

(B) If a member of the public requests correction of DOE or DOE-sponsored information by letter, addressed to the CIO, then the letter must:

(1) Specifically identify the information in question and the document(s) containing the information;

(2) Explain with specificity the reasons why the information is inconsistent with the applicable quality standards in the OMB Guidelines or DOE guidelines; and

(3) Present substitute information, if any, with an explanation showing that such information is consistent with the OMB guidelines and the DOE implementing guidelines.

(C) If a member of the public complains about information set forth or referenced in a DOE or DOE-sponsored document and does not request correction under the OMB or DOE guidelines, then the complaint is not subject to processing as a request for correction under those guidelines.

(D) A member of the public who files a request for correction under this paragraph has the burden of proof with respect to the necessity for correction as well as with respect to the type of correction requested.

### B. How Does DOE Process Requests for Correction?

(A) *Incomplete requests.* If a request for correction is incomplete, DOE may seek clarification from the person

submitting the request or return it without prejudice to resubmission.

(B) *Public notice of a request for correction.* In selected cases, DOE may publish notice of the receipt of a request for correction and may invite public comment.

(C) *Participation by other interested persons.* By letter, DOE may invite or allow other interested persons to comment on a request for correction.

(D) *Initial decisions.* If the request for correction concerns information that does not involve a document subject to public comment, then the originating office of the DOE Element responsible for dissemination of the information should provide at least an initial response within 60 days (with a copy to the CIO). The response should contain a statement of reasons for the disposition.

(E) *Administrative appeals.* In the event DOE initially denies a request for correction of information not subject to public comment and the person who submitted the request would like additional review, then that person must submit a request for review, including a statement of reasons for modifying or reversing the initial decision, no later than 30 days from the date of that decision. A request for review under this paragraph must be submitted by e-mail to *cio.webmaster@hq.doe.gov,* or by regular mail to Office of the Chief Information Officer, Attention: DOE Quality Guidelines, U.S. Department of Energy, Forrestal Building—Room 8H–089, 1000 Independence Avenue NW., Washington, DC 20585, or via Fax to (202) 586–7996. The CIO will direct the request for review to the DOE Element which supervises the originating DOE program office, and the DOE Element, with the concurrence of the Office of General Counsel, should issue a final decision for DOE (with a copy to the CIO) within 60 days from the date that the request for review is received.

(F) Any corrective action will be determined by the nature and timeliness of the information, the magnitude of the error, and the cost of undertaking a correction. DOE Elements are not required to change, or in any way alter, the content or status of information simply based on the receipt of a request for correction. DOE Elements need not respond substantively to frivolous or repetitive requests for correction. Nor do DOE Elements have to respond substantively to requests that concern information not covered by the OMB or DOE Guidelines or from a person whom the information does not affect.

(G) If DOE determines that a request for correction of information not subject to public comment has merit, DOE may respond by correcting the information in question and without issuing a decision explaining the reasons for accepting the request.

(H) If DOE receives multiple requests for correction of information not subject to public comment, DOE may consolidate the requests and respond on a DOE web site, or by notice in the **Federal Register**, or by issuing a correction in similar form and manner as the original information was issued.

*V. DOE Reporting Requirements*

On an annual fiscal-year basis, the CIO will report to the Director of OMB concerning requests for correction received under these Guidelines. DOE Elements must designate a reporting official, except as agreed otherwise between the DOE Element and the CIO, for example, where the CIO might compile the data for the DOE Element. Where a DOE Element reporting official has been designated, that official must report to the CIO no later than November 1 every year concerning requests received during the previous fiscal year and their resolutions, including requests with regard to information subject to public comment. The first reports are due November 1, 2003. The CIO will compile the DOE consolidated report and submit it annually to OMB beginning January 1, 2004. DOE Element reports should contain the number of complaints received, nature of complaints (*e.g.,* request for deletion or correction) and how they were resolved (*e.g.,* number corrected, denied, or pending review). The report must also include a compilation of the number of staff-hours devoted to handling and resolving such complaints and preparing reports.

[FR Doc. 02–18378 Filed 7–19–02; 8:45 am]
BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER01–890–005 and ER02–1465–002]**

## Boston Edison Company; Notice of Filing

July 16, 2002.

Take notice that on July 3, 2002, Boston Edison Company (Boston Edison) tendered for filing a revised Interconnection Agreement between Sithe Mystic Development LLC and Boston Edison. Boston Edison states that the Interconnection Agreement reflects revisions required by the Commission in its order issued in this proceeding on May 31, 2002, 99 FERC ¶61,241 (2002).

Copies of said filing have been served upon all persons included on the official service list in this proceeding.

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:* July 24, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18382 Filed 7–19–02; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–1902–000]**

## Buchanan Generation, LLC; Notice of Issuance of Order

July 16, 2002.

Buchanan Generation, LLC (Buchanan) submitted for filing a rate schedule under which Buchanan will engage in the sale of energy, capacity and ancillary services at market-based rates and for 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 July 8, 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 August 7, 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. 02–18383 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP02–246–001]**

### Dominion Transmission Inc.; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 10, 2002, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 1155, to be effective July 1, 2002.

DTI states that the filing is being made to comply with the Commission's letter order of June 26, 2002 in the above referenced docket. The revised tariff sheet eliminates timing limitations for pipeline notification to replacement shippers of a recall of capacity.

DTI states that copies of the filing has been served upon all parties on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18391 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP02–247–001]**

### Enbridge Offshore Pipelines (UTOS) LLC; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 9, 2002, Enbridge Offshore Pipelines (UTOS) LLC (UTOS) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute First Revised Sheet No. 122, with an effective date of July 1, 2002.

UTOS states that the filing is being made in compliance with the Commission's June 27, 2002, order in these proceedings and Order No. 587–N.

UTOS states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18392 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP02–239–001]**

### Enbridge Pipelines (KPC); Notice of Compliance Filing

July 16, 2002.

Take notice that on July 9, 2002, Enbridge Pipelines (KPC) (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 121B, with an effective date of July 1, 2002.

KPC states that the filing is being made in compliance with the Commission's June 26, 2002, order in these proceedings and Order No 587–N.

KPC states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18388 Filed 7–18–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–244–001]**

## Enbridge Pipelines (Midla) Inc.; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 9, 2002, Enbridge Pipelines (Midla) Inc. (Midla) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with an effective date of July 1, 2002:
Substitute First Revised Sheet No. 166
Substitute Original Sheet No. 166A

Midla states that the filing is being made in compliance with the Commission's June 27, 2002, order in these proceedings and Order No. 587-N.

Midla states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18389 Filed 7–18–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–245–001]**

## Enbridge Pipelines (AlaTenn) Inc.; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 9, 2002, Enbridge Pipelines (AlaTenn) Inc. (AlaTenn) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 114, and First Revised Sheet No. 146, with an effective date of July 1, 2002.

AlaTenn states that the revised tariff sheets are being filed in compliance with the Commission's June 26, 2002, order in these proceedings and Order No. 587–N.

AlaTenn states that complete copies of its filing are being mailed to all of the parties on the Commission's Official Service list for these proceedings, all of its jurisdictional customers, and applicable State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18390 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–1903–000]**

## FPL Energy Marcus Hook, L.P.; Notice of Issuance of Order

July 16, 2002.

FPL Energy Marcus Hook, L.P. (FPL Marcus Hook) submitted for filing a rate schedule under which FPL Marcus Hook will engage in the sale of energy, capacity and ancillary services at market-based rates, franchised affiliate sales at market-based rates, and for the reassignment of transmission capacity. FPL Marcus Hook also requested waiver of various Commission regulations. In particular, FPL Marcus Hook requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by FPL Marcus Hook.

On July 8, 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 FPL Marcus Hook 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, FPL Marcus Hook 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 FPL Marcus Hook, 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 FPL Marcus Hook'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 August 7, 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. 02–18384 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–265–001]**

## Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 10, 2002, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Original Sheet No. 256A, to be effective on July 1, 2002.

Maritimes states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 27, 2002, in Docket No. RP02–265 (June 27 Order).

Maritimes states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587-N. The June 27 Order conditionally accepted the tariff sheets contained in Maritimes' May 1 tariff filing, effective July 1, 2002, subject to the condition that Maritimes file, within fifteen days of the June 27 Order, substitute revised tariff sheets to reflect the changes required by the June 27 Order. Maritimes is submitting this filing in compliance with the June 27 Order.

Maritimes states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18394 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–405–000]**

## SG Resources Mississippi, L.L.C.; Notice of Petition

July 16, 2002.

Take notice that on July 11, 2002, SG Resources Mississippi L.L.C. (SGRM), 7500 San Felipe, Suite #600, Houston, Texas 77063 filed in Docket No. CP02–405–000 a petition for Exemption of Temporary Acts and Operations from Certificate Requirements, pursuant to Rule 207 (a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(5)), and Section 7(c)(1)(B) of the Natural Gas Act (15 U.S.C. 717(c)(1)(B)), seeking approval of an exemption from certificate requirements to perform temporary activities related to drilling a water supply test well to gather certain data relating to the underground water supply to be used in connection with the development of a planned high deliverability salt cavern natural gas storage facility to be located in Greene County, Mississippi. 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).

Any questions regarding the petition should be directed to James F. Bowe, Jr., Attorney, Dewey Ballantine LLP, 1775 Pennsylvania Avenue, NW., Washington, DC 20006–4605; telephone (202) 429–1444, facsimile (202) 429–1579, e-mail *jbowe@dbllp.com*.

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 26, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the

Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18381 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP02–263–001]**

## Texas Eastern Transmission, LP; Notice of Compliance Filing

July 16, 2002.

Take notice that on July 10, 2002, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Sub First Revised Sheet No. 534, to be effective on July 1, 2002.

Texas Eastern states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 27, 2002, in Docket No. RP02–263 (June 27 Order).

Texas Eastern states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587-N. The June 27 Order conditionally accepted certain of the tariff sheets contained in Texas Eastern's May 1 tariff filing, effective July 1, 2002, subject to the condition that Texas Eastern file, within fifteen days of the June 27 Order, substitute revised tariff sheets to reflect the changes required by the June 27 Order. Texas Eastern is submitting this filing in compliance with the June 27 Order.

Texas Eastern states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 23, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18393 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER02–2042–000]**

## UGI Utilities, Inc.; Notice of Issuance of Order

July 16, 2002.

UGI Utilities, Inc. (UGI) submitted for filing a rate schedule under which UGI will engage in the sales of energy and capacity at market-based rates and for the reassignment of transmission capacity. UGI also requested waiver of various Commission regulations. In particular, UGI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by UGI.

On July 8, 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 UGI 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, UGI 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 UGI, 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 UGI'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 August 7, 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. 02–18385 Filed 7–18–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC02–92–000, et al.]**

## The Empire District Electric Company, et al.; Electric Rate and Corporate Regulation Filings

July 15, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. The Empire District Electric Company

[Docket No. EC02–92–000]

Take notice that on July 5, 2002, The Empire District Electric Company (Empire) filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilitates whereby Empire will transfer functional control of its jurisdictional transmission facilities to the regional transmission organization that will result from consolidation of Southwest Power Pool, Inc. and the Midwest Independent Transmission System Operator, Inc.

Copies of this filing were served on all affected state utility commissions.

*Comment Date:* July 26, 2002.

### 2. Nevada Power Company

[Docket No. ER02–84–003]

Take notice that on July 9, 2002, Nevada Power Company (Nevada Power) tendered for filing a revised and corrected Interconnection and Operation Agreement between Nevada Power and Duke Energy Moapa, LLC.

*Comment Date:* July 30, 2002.

### 3. Boston Edison Company

[Docket No. ER02–843–002]

Take notice that on July 9, 2002, Boston Edison Company (Boston Edison) tendered for filing a Related Facilities Agreement between Boston Edison and Mirant Kendall, LLC (Mirant Kendall) in compliance with the directives of the Federal Energy Regulatory Commission contained in a letter order issued on June 14, 2002 in this proceeding. Boston Edison requests an effective date of the Agreement, of March 26, 2002.

*Comment Date:* July 30, 2002.

### 4. New York Independent System Operator, Inc.

[Docket No. ER02–1507–001]

Take notice that on July 8, 2002, the New York Independent System Operator, Inc. (NYISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), revisions to its Open Access Transmission and Market Administration and Control Area Services Tariffs in order to reflect revisions pertaining to the treatment of Pre-Scheduled Transaction Requests, pursuant to the Commission's order issued on June 6, 2002, in the above-captioned docket. The NYISO has requested an effective date of April 11, 2002, for the filing.

The NYISO has served a copy of this filing upon parties on the official service list maintained by the Commission for the above-captioned docket.

*Comment Date:* July 29, 2002.

### 5. New England Power Pool

[Docket No. ER02–1618–001]

Take notice that on July 8, 2002, the New England Power Pool (NEPOOL) Participants Committee tendered for filing with the Federal Energy Regulatory Commission (Commission), a Report of Compliance as required by the Commission's June 21, 2002 order issued in Docket No. ER02–1618–000.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

*Comment Date:* July 29, 2002.

### 6. Duke Energy Corporation

[Docket No. ER02–2008–001]

Take notice that on July 9, 2002, Duke Energy Corporation (Duke) on behalf of Duke Electric Transmission (Duke ET), tendered for filing an amended Interconnection and Operating Agreement (IOA) between Duke ET and GenPower Anderson, LLC.

Duke seeks an effective date for the amended IOA of June 4, 2002.*Comment Date:* July 30, 2002.

### 7. Duke Energy Corporation

[Docket No. ER02–2079–001]

Take notice that on July 9, 2002, Duke Energy Corporation (Duke) on behalf of Duke Power and Duke Electric Transmission (Duke ET), tendered for filing an executed Service Agreement for Network Integration Transmission Service (NITSA), dated March 14, 1997, and amended May 16, 2002, between Duke Power, on its own behalf and acting as agent for Nantahala Power and Light Company, and the City of Seneca, South Carolina (Seneca). Included with the NITSA were Revised Specifications for network integration transmission service under the NITSA and an executed Network Operating Agreement (NOA) between Duke ET and Seneca.

Duke seeks an effective date of May 16, 2002.

*Comment Date:* July 30, 2002.

### 8. California Independent System Operator Corporation

[Docket No. ER02–2163–001]

Take notice that on July 8, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), an Errata to the First Revised Service Agreement No. 368 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement (PGA) between the ISO and Point Arguello Pipeline Company (Point Arguello). The Errata corrects the Resource ID for Schedule 1. The ISO filed First Revised Service Agreement No. 368 on June 26, 2002 to update Schedule 1 of the PGA. The ISO requested that the revised PGA be made effective as of June 6, 2002.

The ISO states that this filing has been served on all entities that are on the official service list for Docket No. ER01–1953–000.

*Comment Date:* July 29, 2002.

### 9. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2274–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Benham Kentucky (Rate Schedule FERC No 187). The amendment removes contractual language between the City of Benham and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

### 10. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER02–2275–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Corbin Kentucky (Rate Schedule FERC No 188). The amendment removes contractual language between the City of Corbin and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**11. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER02–2276–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Falmouth Kentucky (Rate Schedule FERC No 189). The amendment removes contractual language between the City of Falmouth and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**12. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER02–2277–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Nicholasville Kentucky (Rate Schedule FERC No 163). The amendment removes contractual language between the City of Nicholasville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**13. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER02–2278–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Nicholasville Kentucky (Rate Schedule FERC No 198). The amendment removes contractual language between the City of Nicholausville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**14. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER02–2279–000]

Take notice that on July 5, 2002 , Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Nicholausville Kentucky (Rate Schedule FERC No 216). The amendment removes contractual language between the City of Nicholausville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**15. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER02–2280–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Providence Kentucky (Rate Schedule FERC No 195). The amendment removes contractual language between the City of Providence and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**16. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER02–2281–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Providence Kentucky (Rate Schedule FERC No 196). The amendment removes contractual language between the City of Providence and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**17. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER02–2282–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Madisonville Kentucky (Rate Schedule FERC No 161). The amendment removes contractual language between the City of Madisonville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**18. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER02–2283–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Ownensboro Kentucky (Rate Schedule FERC No 74). The amendment removes contractual language between the City of Owensboro and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**19. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER02–2284–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Paris Kentucky (Rate Schedule FERC No 83). The amendment removes contractual language between the City of Paris and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**20. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER02–2286–000]

Take notice that on July 5, 2002, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an amendment to the full requirement power contract between the Companies and the City of Madisonville Kentucky (Rate Schedule FERC No 192). The amendment removes contractual language between the City of Madisonville and the Southeastern Power Administration (SEPA). The SEPA language has been incorrectly attached to the power agreement.

*Comment Date:* July 26, 2002.

**21. Illinois Power Company**

[Docket No. ER02–2287–000]

Take notice that on July 5, 2002, Illinois Power Company (Illinois Power), filed a First Revised Network Integration Transmission Service Agreement with Illinois Power, as retail merchant.

Illinois Power requests an effective date of July 1, 2002 for the Agreement and seeks a waiver of the Commission's

notice requirement. Illinois Power has mailed a copy of the filing to the Transmission Customer.

*Comment Date:* July 26, 2002.

**22. California Independent System Operator Corporation**

[Docket No. ER02–2288–000]

Take notice that on July 8, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), a participating Generator Agreement between the ISO and Recot, Inc., dba Frito-Lay Inc. For acceptance by the Commission.

The ISO states that this filing has been served on Frito-Lay and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective June 25, 2002.

*Comment Date:* July 29, 2002.

**23. California Independent System Operator Corporation**

[Docket No. ER02–2289–000]

Take notice that the on July 8, 2002, California Independent System Operator Corporation, (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and Recot, Inc., dba Frito-Lay Inc. for acceptance by the Commission.

The ISO states that this filing has been served on Frito-Lay and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective June 25, 2002.

*Comment Date:* July 29, 2002.

**24. WPS Resources Operating Companies[Docket No. ER02–2290–000]**

Take notice that on July 8, 2002, the WPS Resources Operating Companies, on behalf of Wisconsin Public Service Corporation and Upper Peninsula Power Company (collectively, WPS Resources) tendered for filing with the Federal Energy Regulatory Commission (Commission), a notice of cancellation and revised service agreement cover sheets (Cancellation Documents) to terminate service agreements between WPS Resources and its customers providing for transmission service. The Cancellation Documents are being filed because WPS Resources is no longer providing service under the service agreements.

WPS Resources respectfully requests that the Commission allow the Cancellation Documents to become effective on July 9, 2002, the day after filing.

Copies of the filing were served upon customers that were taking service under the service agreements, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment Date:* July 29, 2002.

**25. Northern Indiana Public Service Company**

[Docket No. ER02–2291–000]

Take notice that on July 8, 2002, Northern Indiana Public Service Company (Northern Indiana), tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Energy USA-TPC Corp., Transmission Customer (Transmission Customer).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Non-Firm Point-to-Point Transmission Service to Transmission Customer pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of July 9, 2002.

*Comment Date:* July 29, 2002.

**27. Northern Indiana Public Service Company**

[Docket No. ER02–2292–000]

Take notice that on July 8, 2002, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Energy USA-TPC Corp. (Transmission Customer).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Firm Point-to-Point Transmission Service to Transmission Customer pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of July 9, 2002.

Copies of this filing have been sent to Energy USA-TPC Corp., the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

*Comment Date:* July 29, 2002.

**28. Mt. Carmel Public Utility Co.**

[Docket No. ER02–2293–000]

Take notice that on July 8, 2002, Mt. Carmel Public Utility Co., (Mt. Carmel) tendered for filing executed Service and Operating Agreements between Mt. Carmel and Central Illinois Public Service Co., (dba Ameren/CIPS). Mt. Carmel asserts that the purpose of the Agreement is to permit Mt. Carmel to provide transmission service to Ameren/CIPS pursuant to Mt. Carmel's Open Access Transmission Tariff.

*Comment Date:* July 29, 2002.

**29. New England Power Pool**

[Docket No. ER02–2294–000]

Take notice that on July 8, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted a refiling of Sections 5 and 7 of Schedule 18 to the NEPOOL Tariff. Expedited consideration, a waiver of the sixty-day notice requirement and a June 1, 2002 effective date has been requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

*Comment Date:* July 29, 2002.

**30. American Electric Power Service Corporation**

[Docket No. ER02–2295–000]

Take notice that on July 9, 2002, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively AEP) filed proposed amendments to its Open Access Transmission Tariff in the above-referenced docket.

AEP requests an effective date of July 1, 2000 for the proposed amendment. Copies of AEP's filing have been served upon AEP's transmission customers and the public service commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

*Comment Date:* July 30, 2002.

**31. El Paso Electric Company**

[Docket No. ES02–48–000]

Take notice that on June 28, 2002, El Paso Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to extend the maturity dates of its pollution control bonds.

*Comment Date:* July 25, 2002.

**32. Atlantic City Electric Company**

[Docket No. OA02–6–000]

Take notice that on July 2, 2002, Atlantic City Electric Company (Atlantic), tendered for filing revised standards of conduct procedures. Atlantic updated its list of affiliates in the procedures. It also updated the web and physical location of the procedures.

Copies of the filing were served upon the official service list.

*Comment Date:* August 1, 2002.

**33. Delmarva Power & Light Company**

[Docket No. OA02–7–000]

Take notice that on July 2, 2002, Delmarva Power & Light Company (Delmarva) filed Revised Standards of Conduct Procedures. DelMarva updated its list of affiliates in the procedures. It also updated the web and physical location of the procedures.

Copies of the filng were served upon the official service list.

*Comment Date:* August 1, 2002.

**Standard Paragraph**

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

**Magalie R. Salas,**

*Secretary*

[FR Doc. 02–18344 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP02–374–000]**

## Hackberry LNG Terminal, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Hackberry LNG Terminal Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting and Site Visit

July 16, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of Hackberry LNG Terminal L.L.C.'s (Hackberry) proposed Hackberry LNG Terminal Project in Louisiana.[1] These proposed facilities would consist of liquefied natural gas (LNG) import terminal and storage facilities in Cameron Parish and 35.4 miles of 36-inch-diameter pipeline in Cameron, Calcasieu, and Beauregard Parishes, Louisiana. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice is being sent to residences within 0.5 mile of Hackberry's proposed LNG facilities and to landowners along the proposed pipeline route. If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Hackberry provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*http://www.ferc.gov*).

[1] Hackberry's application was filed with the Commission under Sections 3(a) and 7(c) of the Natural Gas Act and Parts 157 and 284 of the Commission's regulations.

*Summary of the Proposed Project*

Hackberry proposes to build a new LNG import, storage, and vaporization terminal approximately 2.3 miles north of Hackberry, Louisiana; and a natural gas pipeline to transport approximately 1.5 billion cubic feet per day of imported natural gas to the United States market. The natural gas would primarily supply new power generation markets. Hackberry seeks authorization to construct and operate the following new facilities at its proposed site:

- LNG ship docking and unloading facilities with two berths, each equipped with mooring and breasting dolphins, three liquid unloading arms, and one vapor return arm;
- three double-walled LNG storage tanks each with a usable volume of 1,006,000 barrels (3.5 billion cubic feet of gas equivalent);
- nine 250 million standard cubic feet per day (MMscf/d) in-tank pumps;
- ten 188 MMscf/d second-stage pumps;
- twelve 150 MMscf/d submerged combustion vaporizers;
- a boil-off gas compressor and condensing system;
- an LNG circulation system to maintain the facilities at the appropriate temperature when LNG ships are not being unloaded;
- a natural gas liquids recovery unit;
- utilities, buildings, and service facilities; and
- 35.4 miles of 36-inch-diameter natural gas pipeline extending from the LNG import terminal in Cameron Parish north through Calcasieu Parish to a connection with the existing Transcontinental Gas Pipe Line compressor station site in Beauregard Parish.

As part of the proposed project, Hackberry plans to remove the existing liquefied petroleum gas facilities and associated dock at the proposed site. The general location of the project facilities is shown in appendix 1.[2]

Hackberry is requesting approval to begin construction of the LNG facilities in October 2003 and the pipeline in April 2006. The approximate duration of construction of the LNG facilities would be 3 years, while pipeline construction would take 6 months. Hackberry proposes to place the project in service by November 2006.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website (*http://www.ferc.gov*) at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

*Land Requirements for Construction*

Construction of the LNG terminal would require about 153 acres for the docking and LNG terminal facilities. Construction of the proposed pipeline facilities would disturb about 446 acres of land including the construction right-of-way, temporary extra workspaces, and contractor/pipe yards. Additional temporary work areas would include the use of 36.1 miles of primarily existing access roads along the proposed pipeline route. Approximately 6.1 miles of these access roads would require some improvements, resulting in the disturbance of 36.7 acres. The nominal construction right-of-way for the pipeline would be 100 feet wide. Additional right-of-way width and temporary extra workspace would be required at road and waterbody crossings and areas requiring topsoil segregation or special construction techniques.

Hackberry would maintain a 50-foot-wide permanent right-of-way for operation of the pipeline. Total land requirements would be approximately 199 acres for the new permanent right-of-way and 101 acres for the LNG facilities. Aboveground facilities associated with the pipeline, including mainline block valves, pig launchers and receivers, would be located within the new permanent right-of-way.[3]

*The EIS Process*

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals.[4] This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues and reasonable alternatives. By this Notice of Intent, we are requesting agency and public comments on the scope of the issues to be analyzed and presented in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the Draft EIS. The Draft EIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to all comments received. To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

*Currently Identified Environmental Issues*

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of environmental issues and alternatives that we think deserve attention based on a preliminary review of the proposed facilities, and the environmental information provided by Hackberry. This preliminary list of issues and alternatives may be changed based on your comments and our additional analysis.

- Geology and Soils:
  - —Assessment of potential geological hazards, including subsidence.
  - —Assessment of potentially contaminated dredge material.
  - —Impact on mineral and petroleum resources.
  - —Erosion and sedimentation control.
  - —Right-of-way restoration.
- Water Resources:
  - —Impact on groundwater and surface water supplies.
  - —Assessment of dredge and fill of coastal wetlands associated with construction of the proposed LNG terminal.
  - —Assessment of alternatives to avoid or minimize wetland impacts.
  - —Permanent impact on forested wetlands associated with construction and maintenance of the pipeline.
  - —Impact on wetland hydrology.
  - —Effect of pipeline crossings on perennial and intermittent streams, canals, and ditches, including possible increased turbidity from construction.
  - —Assessment of hydrostatic test water sources and discharge locations.
- Fish, Wildlife, and Vegetation:
  - —Effect on Essential Fish Habitat.
  - —Effect on economically important marine fisheries.
  - —Effect on wildlife resources and their habitat.
  - —Effect on migratory birds.
  - —Assessment of wildlife-related construction time window restrictions.
  - —Control of noxious weeds within the right-of-way.
  - —Assessment of measures to successfully revegetate the right-of-way.
  - —Clearing and permanent loss of forestland.
- Endangered and Threatened Species:
  - —Potential effect on federally listed species.
- Cultural Resources:
  - —Assessment of survey methodologies.
  - —Effect on historic and prehistoric sites.
  - —Native American and tribal concerns.
- Paleontological resources:
  - —Effect on paleontological resources.
- Land Use, Recreation and Special Interest Areas, and Visual Resources:
  - —Permanent land use alteration associated with site development.
  - —Impacts on forest land associated with pipeline construction, including forested wetlands.
  - —Impact on residences near the pipeline construction work area.
  - —Evaluation of the project's consistency with coastal zone management area guidelines.
  - —Visual impacts associated with the new LNG terminal and storage tanks.
- Socioeconomics:
  - —Effects on transportation and traffic within the project area, including the increase of shipping traffic within the Calcasieu Ship Channel by approximately 210 LNG tankers per year.
  - —Effects of construction workforce demands on public services and temporary housing.
- Air Quality and Noise:
  - —Effects on local air quality and noise environment from construction and operation of the proposed facilities.
- Reliability and Safety:
  - —Assessment of hazards associated with shipping and storage of LNG.
  - —Assessment of hazards associated with natural gas pipelines.
- Alternatives:
  - —Assessment of the use of existing natural gas systems to reduce or avoid environmental impacts.
  - —Evaluation of alternative sites for the LNG import and storage facilities.
  - —Evaluation of pipeline route alternatives.
  - —Identification of measures to lessen or avoid impacts on the various resource and special interest areas.

[3] A pig is an internal tool used to clean, dry, or internally inspect a pipeline for potential leaks.

[4] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

- Cumulative Impact:
  —Assessment of the effect of the proposed project when combined with other past, present, or future actions in the same region.

*Public Participation*

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.
- Reference Docket No. CP02–374–000.
- Mail your comments so that they will be received in Washington, DC on or before August 16, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

*Public Scoping Meetings and Site Visit*

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting we will conduct in the project area. The location and time for this meeting is listed below: August 6, 2002, 7:00 pm. Holiday Inn Express, 102 Mallard Street, Sulphur, Louisiana 70665, Telephone: 337–625–2500.

The public scoping meeting is designed to provide state and local agencies, interested groups, affected landowners, and the general public with more detailed information and another opportunity to offer your comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

On the day of the meeting, we will also be conducting a limited site visit to the LNG terminal site and pipeline route. Anyone interested in participating in the site visit should meet at the proposed LNG terminal site, located approximately 15 miles south of Sulphur, Louisiana along Louisiana State Route 27, at 8:30 AM on August 6, 2002. The meeting place is a gravel drive on the left side of Louisiana State Route 27, two miles south of the Intracoastal Waterway bridge. Participants must provide their own transportation.

*Becoming an Intervenor*

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR385.214) (see appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

*Environmental Mailing List*

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EIS.

*Additional Information*

Additional information about the proposed project is available from the Commission's Office of External Affairs at 1–866–208–FERC or on the FERC website (*http://www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18380 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

[5] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2197]**

## Notice of Temporary Variance and Soliciting Comments, Motions To Intervene, and Protests

July 16, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for temporary variance to minimum flow releases

b. *Project No:* 2197–052

c. *Date Filed:* July 3, 2002

d. *Applicant:* Alcoa Power Generating Inc.

e. *Name of Project:* Yadkin

f. *Location:* The project is located on the Yadkin/Pee Dee River, in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a), 825(r) and sections 799 and 801.

h. *Applicant Contact:* Julian Polk, Alcoa Power Generating Inc., 293 NC 740 Highway, P.O. Box 576, Badin, NC 28009–0576, (704) 422–5617.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. T.J. LoVullo at (202) 219–1168, or e-mail address: *thomas.lovullo@ferc.gov*.

j. *Deadline for filing comments and or motions:* August 1, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number ( P–2197) on any comments or motions filed.

k. *Description of Request:* As the result of a meeting held on July 3, 2002, Alcoa Power Generating Inc. (APGI or licensee), Duke Energy, Progress Energy, Aquila Energy Marketing Corporation, Commission staff, and representatives from most of the resources agencies with responsibility for water for the States of North Carolina and South Carolina concerning the drought in the project area and reservoir levels in the project reservoirs, there emerged a consensus that it would be prudent on behalf of all users of water on that watershed to reduce minimum releases from the Yadkin Project from 1,400 cubic feet per second (cfs) to 1,200 cfs. Accordingly, APGI requests the Commission grant it a temporary variance in the minimum release requirements from 1,400 cfs to 1,200 cfs until September 15, 2002, or further order of the Commission. On July 5, 2002, the Commission granted the variance request, but reserved authority to require changes to minimum releases associated with the temporary variance based upon comments received from this notice.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–18387 Filed 7–18–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of FERC Staff Participation at Stakeholder Meeting on the California Independent System Operator's Comprehensive Market Redesign Proposal

July 16, 2002.

The Federal Energy Regulatory Commission hereby gives notice that on July 23, 2002, members of its staff will attend the meeting sponsored by several stakeholders about the California Independent System Operator's Comprehensive Market Redesign Proposal. The staff's attendance is part of the Commission's ongoing outreach efforts. The meeting is sponsored by Tony Braun of Braun and Associates, P.C. and will be held at the offices of Sempra Energy, 101 Ash Street, San Diego, CA. This meeting is open to the public. The meeting may discuss matters at issue in Docket Nos. EL00–95–000 and ER02–1656–000. For more information, contact Tony Braun at (916) 441–1733, or Susan Pollonais at (202) 208–0011.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–18386 Filed 7–19–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7248–6]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request; 2003 Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 2003 Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows and expires one year from the effective date of the ICR. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 21, 2002.

**ADDRESSES:** Send comments, referencing EPA ICR No. 2063.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Susan Auby

at EPA by phone at (202) 566–1672, by E-mail at auby.susan@epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2063.01 For technical questions about the ICR contact Kevin DeBell, Office of Water, at (202) 564–0040.

**SUPPLEMENTARY INFORMATION:**

*Title:* 2003 Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows (EPA ICR No. 2063.01) expiring one year from the effective date of the ICR. This is a new collection.

*Abstract:* EPA is developing the 2003 Report to Congress on Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows to meet a requirement included in the Consolidated Appropriations Act for Fiscal Year 2001, Public Law 106–554. EPA's Office of Wastewater Management (OWM) will use data from federal sources, state environmental agencies, state and local health departments, and municipalities to determine, summarize, and report the extent of human health and environmental impacts caused by municipal combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs). This Report will also include information on resources spent to address these impacts and an evaluation of the technologies used by municipalities to address these impacts. In addition, this Report will support EPA's SSO Notice of Proposed Rulemaking effort and data integration efforts for the National Pollutant Discharge Elimination System (NPDES) program.

OWM's method for collecting and analyzing the data for CSOs and SSOs from state environmental agencies, state and local health departments, and municipalities is as follows: site visits; interviews; file review; and phone calls to a subset of publicly owned treatment works (POTWs) and health departments nationwide. In addition, information that is collected from the various entities is voluntary and available to the public.

The data collected and analyzed for this Report will include the location of permitted and unpermitted wastewater discharges, the volume of pollutants discharged, and the constituents discharged; environmental and public health impacts of discharges; the resources spent to address these impacts; and an evaluation of the technologies used to address these impacts.

The burden for states and municipalities to provide, analyze, and review data submitted is a total of 6,300 hours and a cost of $307,492. This burden will occur once, and the collection of information should be completed one-year from the effective date of the ICR. Of the total portion, the municipal burden is 2,565 hours and $121,986. The states burden is 3,735 hours and $185,506.

All data will be stored in a data management system developed by OWM. The data will be used as a cornerstone of the 2003 Report to Congress, giving federal offices, states, municipalities, and the public full access to the data collected both in print and through OWM's website (www.epa.gov/npdes).

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 **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 05/02/02 (67 *FR* 22077–22078); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information will vary in hours, depending on the available information. 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.

*Respondents/Affected:* State environmental agencies; State and local health departments; Municipal wastewater treatment authorities

*Estimated Number of Respondents:* 535.

*Frequency of Response:* Once.

*Estimated Total Annual Hour Burden:* 6,300

*Estimated Total Annualized Capital, O&M Cost Burden:* $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2063.01 in any correspondence.

Dated: July 11, 2002.

**Oscar Morales,**

*Director, Collection , Strategies Division.*

[FR Doc. 02–18409 Filed 7–19–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7248–7]**

## Agency Information Collection Activities; OMB Responses

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

**ACTION:** Notices.

**SUMMARY:** This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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.

**FOR FURTHER INFORMATION CONTACT:** Susan Auby at (202) 566–1672, or e-mail at *Auby.susan@epa.gov.* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR No. 2070.01; Reporting and Recordkeeping Requirements for NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Final Amendments Rule); Final Rule; in 40 CFR part 63, subpart EEE was approved 05/10/2002; OMB No. 2050–0187; expires 10/31/2004.

EPA ICR No. 0801.14; Requirements for Generators, Transporters, and Disposers under the RCRA Hazardous Waste Manifest System; was approved 05/10/2002; in 40 CFR 262.20, 262.21, 262.22, 262.23, 262.40, 262.42, 262.54, 262.55, 263.20, 263.22, 264.71, 264.72, 262.76, 265.71, 265.72 and 265.76; OMB No. 2050–0039; expires 05/31/2005.

EPA ICR No. 1773.05; Amendments to the Reporting and Recordkeeping Requirements for National Emissions Standards for Hazardous Air Pollutants

(NESHAP) for Hazardous Waste Combustors—Direct Final Rule; in 40 CFR part 63, subpart EEE; was approved 05/10/2002; OMB No. 2050–0171; expires 10/31/2004.

EPA ICR No. 1679.04; Federal Standards for Marine Tank Vessel Loading Operations and National Emission Standards for Hazardous Air Pollutants for Marine Tank Vessel Loading Operations; in 40 CFR part 63, subpart Y; was approved 05/09/2002; OMB No. 2060–0289; expires 05/31/2005.

EPA ICR No. 1432.21; Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transshipment and Feedstock Use of Ozone-Depleting Substances; in 40 CFR part 82; was approved 05/09/2002; OMB No. 2060–0170; expires 05/31/2005.

EPA ICR No. 2069.01; Reporting and Recordkeeping Requirements for National Emissions Standards for NESHAP: Interim Standards for Hazardous Wastes Combustors(Interim Standards Rule); Final Rule; was approved 05/07/2002; OMB No. 2050–0186; expires 10/31/2004.

EPA ICR No. 2043.01; Institutional Controls Tracking Systems and Costs Survey; was approved 05/27/2002; OMB No. 2050–0185; expires 05/31/2005.

EPA ICR No. 1648.04; Control Technology Determination for Equivalent Emission Limitations by Permit; was approved 05/27/2002; in 40 CFR part 63, subpart B; OMB No. 2060–0266; expires 05/31/2005.

EPA ICR No. 1850.03; NESHAP Primary Copper Smelters; in 40 CFR part 63, subpart QQQ; was approved 05/23/2002; OMB No. 2060–0476; expires 05/31/2005.

EPA ICR No. 1362.04; National Emission Standards for Coke Oven Batteries; in 40 CFR 63, subpart L; was approved 05/31/2002; OMB No. 2060–0253; expires 05/31/2005.

EPA ICR No. 1965.01; Soil Ingestion Research; was approved 05/06/2002; OMB No. 2050–0188; expires 05/31/2005.

*Short-Term Extensions*

EPA ICR No. 0012.11; Motor Vehicle Exclusion Determination; in 40 CFR 85.1703; OMB No. 2060–0124; on 05/09/2002 OMB extended the expiration date through 08/31/2002.

EPA ICR No. 0167.06; Verification of Test Parameters and Parts Lists for Light-Duty Vehicles and Light-Duty Trucks; OMB No. 2060–0094; on 05/09/2002 OMB extended the expiration date through 08/31/2002.

EPA ICR No. 1154.05; NESHAP Benzene Emissions from Bulk Transfer Operations; in 40 CFR part 61, subpart BB; OMB No. 2060–0182; on 05/09/2002 OMB extended the expiration date through 08/31/2002.

EPA ICR No. 1852.01; Exclusion Determinations for New Non-Road Spark-Ignited Engines At or Below 19 Kilowatts, New Compression-Ignited Engines At or Above 37 Kilowatts, New Marine Engines, and New On-Road Heavy; OMB No. 2060–0395; in 40 CFR part 85, subpart R, part 89, subpart A, part 90, subpart J, part 91, subpart K; on 05/15/2002 OMB extend the expiration date through 06/30/2002.

EPA ICR No. 1601.04; Air Pollution Regulations for Outer Continental Shelf Activities; in 40 CFR part 55; OMB No. 2060–0249; on 05/15/2002 OMB extended the expiration date through 06/30/2002.

*Comment Filed*

EPA ICR No. 2023.01; Recordkeeping and Reporting Requirements for the Clay Ceramics Manufacturing NESHAP; on 05/09/2002 OMB filed comment.

EPA ICR No. 1952.01; National Emission Standards for Hazardous Air Pollutants; Metal Furniture Surface Coating Operations; on 05/09/2002 OMB filed comment.

EPA ICR No. 2032.01; Recordkeeping and Reporting Requirements for NESHAP for Hydrochloric Acid Production; on 05/09/2002; OMB filed comment.

EPA ICR No. 1897.03; Information Requirements of Marine Diesel Engines (Nonroad Large SI Engines and Marine Engines and Boats) (Amendments); on 05/16/2002 OMB filed comment.

EPA ICR No. 0783.43; Motor Vehicle Emission Standards and Emission Credits Provisions (Highway Motorcycles and Recreational Vehicle Amendments); OMB No. 2060–0104; on 05/16/2002 OMB filed comment.

EPA ICR No. 2027.01; Recordkeeping and Reporting Requirements for NESHAP for Flexible Polyurethane Foam Fabrication; on 5/23/2002 OMB filed comment.

Dated: July 11, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–18408 Filed 7–19–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7248–5]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request, NESHAP: Natural Gas Transmission and Storage Facilities

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: NESHAP: Natural Gas Transmission and Storage Facilities (40 CFR part 63, subpart HHH); OMB Control Number 2060–0418; expiration date July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 21, 2002.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1789.03 and OMB Control No. 2060–0418, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1789.03. For technical questions about the ICR contact Dan Chadwick of the Office of Compliance at (202) 564–7054 or via e-mail at *chadwick.dan@epa.gov*

**SUPPLEMENTARY INFORMATION:**

*Title:* NESHAP: Natural Gas Transmission and Storage Facilities (40 CFR part 63, subpart HHH), OMB Control Number 2060–0418, EPA ICR Number 1789.03, expiration date July 31, 2002. This is a request for extension of a currently approved collection.

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP), for the regulations published at 40 CFR part 63, subpart HHH were

proposed on February 6, 1998 and promulgated on June 17, 1999. These regulations apply to the following facilities in 40 CFR part 63, subpart HHH: facilities that are major sources or area sources of hazardous air pollutants (HAP) that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user, and that commences construction, modification or reconstruction after the date of proposal. Specifically exempted from this regulation are oil and natural gas production wells. This information is being collected to assure compliance with 40 CFR part 63, subpart HHH.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP.Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 5 years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

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 **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on; 01/30/02 no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 19 hours per response. 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.

*Respondents/Affected Entities:* Owners and Operators of Natural Gas Transmission andStorage Facilities.

*Estimated Number of Respondents:* 7.

*Frequency of Response:* On Occasion, Semi-Annually, Annually.

*Estimated Total Annual Hour Burden:* 581 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1789.03 and OMB Control No. 2060–0418 in any correspondence.

Dated: July 10, 2002.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 02–18411 Filed 7–19–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0154; FRL–7190–7]**

## Organophosphate Pesticides; Availability of the Revised Organophosphate Cumulative Risk Assessment; Extension of Comment Period

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

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA is extending the comment period for the revised organophosphorous (OP) cumulative risk assessment for an additional 30 days. The revised OP cumulative risk assessment was released to the public for comment in the **Federal Register** of June 20, 2002. The revised assessment was developed as part of EPA's process for tolerance reassessments under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). By allowing access and opportunity for comment on the revised risk assessment, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information.

**DATES:** Comments, identified by the docket ID number OPP–2002–0154, must be received on or before August 21, 2002.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0154 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; fax number: (703) 308–8005; e-mail address: angulo.karen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining and submitting comments on the revisions to the OP pesticide cumulative risk assessment, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*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/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also

go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/cumulative.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0154. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

*C. How and to Whom Do I Submit Comments?*

As described in Unit III. of the notice published in the **Federal Register** of June 20, 2002 (67 FR 41993) (FRL–7183–1), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in that notice. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket ID number OPP–2002–0154 in the subject line on the first page of your response.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Background

EPA is extending the comment period for the revised OP cumulative risk assessment, which was released to the public for comment in the **Federal Register** of June 20, 2002 (67 FR 41993) (FRL–7183–1). The documents provide information on the revisions that were made to the preliminary OP cumulative risk assessment, which was released to the public in the **Federal Register** of December 28, 2001 (66 FR 67249) (FRL–6816–5).

## List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: July 17, 2002.

**Lois Ann Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 02–18582 Filed 7–18–02; 1:33 pm]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7249–2]**

## Announcement of Public Comment Period for Draft Contaminated Sediments Science Plan

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Environmental Protection Agency has developed and requests public comment on the draft Contaminated Sediments Science Plan. The Contaminated Sediments Science Plan is available electronically at *http://www.epa.gov/superfund/action/guidance/cssp.pdf* and *http://www.epa.gov/superfund/action/guidance/cssp-appendix.pdf*. This science plan is a mechanism for the EPA to develop and coordinate Agency-wide science activities in the contaminated sediments area. Along with the EPA's contaminated sediments science activities database, this plan provides an analysis of the current Agency science activities in this area, identifies and evaluates the science gaps, and provides a strategy for filling those gaps. Implementation of the science recommendations will be contingent upon overall Agency priorities and resources available within the annual budgetary planning cycle. Four questions for which the EPA is particularly seeking public comment are provided below in the section Issues for Public Comment. The information submitted in response to this notice will be considered by the EPA in the completion of the final document.

**DATES:** Comments must be received on or before September 20, 2002.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions provided in section I.B. of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Contact the RCRA/Superfund Call Center at (800) 424–9346; from the Washington, DC, metropolitan area call (703) 412–9810. The Telecommunications Device for the Deaf (TDD) number is (800) 553–7672; from the Washington, DC, metropolitan area the number is (703) 412–3323. For technical inquiries, you may contact Lee Hofmann, Office of Solid Waste and Emergency Response, Mail Code 5103T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at telephone

number 202–566–1928, or by email *hofmann.lee@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket:* The EPA has established an official public docket for this action under Docket ID No. SFUND–2002–0004. The official public docket is the collection of materials that is available for public viewing at EPA, Superfund Docket located at 1235 Jefferson Davis Highway, Arlington, Virginia. This Docket Facility is open from 9:00 a.m. to 4:00 p.m. EST, Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 603–9232.

2. *Electronic Access.* You may access this **Federal Register** notice or document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use the EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in the EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in the EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.

For public commenters, it is important to note that the EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in the EPA's electronic public docket as the EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When the EPA identifies a comment containing copyrighted material, the EPA will provide a reference to that material in the version of the comment that is placed in the EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in the EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about the EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by the EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. You may submit comments until 60 days from the date of this document. Comments received after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, the EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows the EPA to contact you in case the EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that the EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in the EPA's electronic public docket. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of the EPA's electronic public docket to submit comments to the EPA electronically is the EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access the EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources, Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. SFUND–2002–0004. The system is an ''anonymous access'' system, which means the EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Superfund.docket@epa.gov,* Attention Docket ID No. SFUND–2002–0004. In contrast to the EPA's electronic public docket, the EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through the EPA's electronic public docket, the EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by the EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in the EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of your comments and enclosures (including references) to: EPA, Superfund Docket Contaminated Sediments Science Plan, Mail Code 5202G, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. SFUND–2002–0004. If you want receipt of your comments acknowledged, you must include a self-addressed, stamped envelope.

3. *By Hand Delivery or Courier.* Deliver an original and three copies of your comments and enclosures (including references) to: Superfund Docket, 1235 Jefferson Davis Highway, Arlington, Virginia, Attention Docket ID No. SFUND–2002–0004. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (703) 603–9240, Attention Docket ID. No. SFUND–2002–0004.

**II. Purpose of the Science Plan**

This Contaminated Sediments Science Plan is a mechanism for the U.S. Environmental Protection Agency (EPA) to develop and coordinate Agency-wide science activities in the contaminated sediments area. Along with the EPA's contaminated sediments science activities database, this plan provides an analysis of the current Agency science activities in this area, identifies and evaluates the science gaps, and provides a strategy for filling these gaps. The Contaminated Sediments Science Plan has three goals to promote the vision of providing a strong scientific basis for addressing contaminated sediments: (1) To develop and disseminate the tools and science necessary to address the management of contaminated sediments; (2) To enhance the level of coordination and communication of science activities dealing with contaminated sediments across the Agency Program and Regional Offices and the Office of Research and Development; and (3) To develop an effective, cost-efficient strategy to promote these scientific activities and research.

**III. Description of Science Plan**

The draft document has four chapters. Chapter 1 discusses the goals and objectives and how the Science Plan relates to the Agency's mandate. Chapter 2 provides an overview of the contaminated sediments work across the Agency. These issue summaries provide the overall context for the discussion of the specific research and science needs given in the rest of the Science Plan. Chapter 3, along with the EPA's contaminated sediments science activities database (Appendix A), is the data collection and analysis section of the Science Plan. It documents the current contaminated sediment science activities ongoing within the Agency and places these activities within the context of Agency goals. These activities are sediment site characterization, exposure assessment, human health and ecological risk assessment, risk communication, sediment remediation, baseline and post-remediation monitoring and information management and exchange activities. Significant data gaps and uncertainties in methodology/assessment procedures are identified. Finally, it proposes research and science activities to fill those data gaps and resolve related issues. Chapter 4 provides the key recommendations for future Agency science activities, including research, based upon the discussion in Chapter 3. For each recommendation, critical EPA partners, and the immediate or long-term nature of the science activity are proposed. An internal mechanism for implementing the science recommendations is proposed. Implementation of the science recommendations will be contingent upon overall Agency priorities and resources available within the annual budgetary planning cycle.

*Issues for Public Comment:* The EPA solicits comments on all aspects of the draft science plan. In particular, the EPA requests comments and information on the following questions: (1) The Contaminated Sediments Science Plan (Science Plan) is the first official Agency science plan of its kind designed to address a significant cross-agency environmental issue in a systematic and integrated fashion. Does the Science Plan adequately convey the need for such a strategic planning document, i.e., are the goals and objectives of the plan understandable and appropriate to the subject? (2) Are the major areas of contaminated sediments science (sediment site characterization, exposure assessment, human health effects and risk assessment, ecological effects and risk assessment, sediment remediation, baseline and post-remediation monitoring, risk communication, and information management and exchange activities) appropriately addressed? Are any major areas missing?

(3) Are the key recommendations clearly defined and appropriate to resolve the science needs discussed in Chapter 3?

(4) Are there other issues or key recommendations which should be considered in this Science Plan?

Dated: July 12, 2002.

**Marianne Lamont Horinko,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 02–18406 Filed 7–19–02; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7248–8]**

### Valley Chemical Superfund Site/ Greenville, MS; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has proposed to settle claims for response costs at the Valley Chemical Superfund Site (Site) located in Greenville, Mississippi, with Carl A. Bauer. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Mr. Greg Armstrong at the above address within 30 days of the date of publication.

Dated: June 26,2002.

**James T. Miller,**

*Acting Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 02–18407 Filed 7–19–02; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 96–45; DA 02–1466]**

### Wireline Competition Bureau Seeks Comment on Smith Bagley, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Navajo Reservation in Utah

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; solicitation of comments.

**SUMMARY:** In a Public Notice in this proceeding released on June 21, 2002, the Wireline Competition Bureau sought comment on Smith Bagley's petition seeking designation as an eligible telecommunications carrier to receive Federal universal service support for the provision of service on the Navajo Reservation in Utah.

**DATES:** Comments are due on or before August 21, 2002. Reply comments are due on or before September 5, 2002.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. *See* Supplementary Information section for where and how to file comments.

**FOR FURTHER INFORMATION CONTACT:** Anita Cheng, Assistant Division Chief,

Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400 TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** On May 24, 2002, Smith Bagley, Inc. (Smith Bagley) filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive Federal universal service support for the provision of service on the Navajo Reservation in Utah. Smith Bagley contends that its service offering to tribal residents on the Navajo Reservation is not subject to the jurisdiction of the Public Service Commission of Utah (Utah Commission). Smith Bagley also maintains that it satisfies all the statutory and regulatory requirements to be an ETC, and that designating Smith Bagley as an ETC for the Navajo Reservation in Utah will advance the public interest. The Wireline Competition Bureau seeks comment on Smith Bagley's petition.

In the *Twelfth Report and Order,* 65 FR 47941, August 4, 2000, the Commission concluded that a carrier seeking ETC designation of service provided on tribal lands may petition the Commission under section 214(e)(6), without first seeking designation from the appropriate state commission. The petitioner must provide copies of its petition to the appropriate state commission at the time of filing with the Commission. Pursuant to the guidelines established in the *Twelfth Report and Order*, the Commission will publish a copy of this Public Notice, or a summary thereof, in the **Federal Register**. The Commission will also send the Public Notice announcing the comment and reply comment dates to the Utah Commission by overnight express mail to ensure that the state commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1415, 1.419, interested parties may file comments on or before August 21, 2002 and reply comments on or before September 5, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 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, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelve Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

**Anita Cheng,**

*Assistant Division Chief, Telecommunications Access Policy Division.*

[FR Doc. 02–18350 Filed 7–19–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2562]**

### Petitions for Reconsideration of Action in Rulemaking Proceedings

July 11, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full test 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 August 6, 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:* Rulemaking to amend Parts 1, 2, 21 and 25 of the Commission's Rules to redesignate the 27.5–29.5 GHz frequency band, to reallocate the 29.5–30.0 GHz frequency band, to establish rules and polices for local multipoint distribution service and for fixed satellite services (CC Docket No. 92–297).

*Number of Petitions Filed:* 1.

*Subject:* Amendment of the FM Table of Allotments (MM Docket No. 00–69).

*Number of Petitions Filed:* 3.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–18369 Filed 7–19–02; 8:45 am]

**BILLING CODE 6712–01–M**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1422–DR]**

### Arizona; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of

Arizona (FEMA–1422–DR), dated June 25, 2002, and related determinations.

**EFFECTIVE DATE:** July 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective July 7, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–18355 Filed 7–19–02; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1422–DR]**

### Arizona; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Arizona (FEMA–1422–DR), dated June 25, 2002, and related determinations.

**EFFECTIVE DATE:** July 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rick Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or Rick.Robuck@fema.gov.

Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sandra L. Coachman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Scott Wells as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–18356 Filed 7–19–02; 8:45 am]

**BILLING CODE 6718–02–M**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1426–DR]**

### Guam; Amendment No.1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Territory of Guam, (FEMA–1426–DR), datedJuly 6, 2002, and related determinations.

**EFFECTIVE DATE:** July 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery and Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Territory of Guam is hereby amended to include Individual Assistance for the Territory of Guam determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 6, 2002:

The Territory of Guam for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance at 75 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–18353 Filed 7–19–02; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1416–DR]**

### Illinois; Amendment No. 5 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Illinois, (FEMA–1416–DR), dated May 21, 2002, and related determinations.

**EFFECTIVE DATE:** July 10, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery and Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 21, 2002:

Hamilton County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–18351 Filed 7–19–02; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1418–DR]**

### Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Indiana, (FEMA–1418–DR), datedJune 13, 2002, and related determinations.

**EFFECTIVE DATE:** July 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery and Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 2002:

Sullivan County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–18352 Filed 7–19–02; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1427–DR]**

### Federated States of Micronesia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia, (FEMA–1427–DR), dated July 11, 2002, and related determinations.

**EFFECTIVE DATE:** July 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery Directorate, Federal EmergencyManagement Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov*.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 11, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia, resulting from Tropical Storm Chata'an, including flooding, mudslides and landslides on July 2–4, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under Public Assistance in the designated area, and Hazard Mitigation throughout the Federated State of Micronesia, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Individual Assistance is later warranted, Federal funds provided under the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William L. Carwile, III of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the Federated States of Micronesia to have been affected adversely by this declared major disaster:

Chuuk State for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance at 75 percent Federal funding.

All areas within the Federated States of Micronesia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–18354 Filed 7–19–02; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL MARITIME COMMISSION

**[Docket No. 98–14]**

### Shipping Restrictions, Requirements and Practices of the People's Republic of China

July 17, 2002.

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Maritime Commission updates a Further Notice of Inquiry, to reflect a recent extension of deadline for comments by the Ministry of Communications of the People's Republic of China.

**DATE:** July 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** David R. Miles, Acting General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5740.

**SUPPLEMENTARY INFORMATION:** On June 28, 2002, the Federal Maritime Commission (''FMC'' or ''Commission'') issued a Further Notice of Inquiry (''FNOI'') soliciting comments with respect to proposed implementing rules of the Ministry of Communications (''MOC'') of the People's Republic of China (''PRC''). 67 FR 44843–44 (July 5, 2002). The FNOI referred to MOC's request for comments as having a deadline for comments of July 15, 2002. However, MOC announced on its official website (*http://www.moc.gov.cn*) on July 16, 2002, that it had extended this deadline, and that it would receive comments on the proposed rules until July 31, 2002.

In light of the fact that the Commission's FNOI referred to the MOC's original deadline of July 15, 2002, it now wishes to notify the shipping public that this deadline should be updated to reflect the revised MOC deadline, which is July 31, 2002.

Now therefore, it is ordered, that this Notice be published in the **Federal Register**.

By the Commission.

**Theodore A. Zook,**

*Assistant Secretary.*

[FR Doc. 02–18379 Filed 7–19–02; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 2002.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Bayerische Hypo-und Vereinsbank AG*, Munich, Germany; which is partially owned by Munchener Ruckversicherungs-Gesellschaft AG, Munich, Germany, which is partially owned by Allianz AG, Munich, Germany; to engage *de novo* through its subsidiary, Identrus, LLC, New York, New York, in certain data processing activities, pursuant to § 225.28(b)(14), of Regulation Y. See also The Royal Bank of Canada, 82 Fed. Res. Bull. 363 (1996) (the ''First Integrion Order'') and the Royal Bank of Canada, 83 Fed. Res. Bull. 135 (1997) (the ''Second Integrion Order''; and together with the First Integrion Order, the ''Integrion Orders''). See also, Cardinal Bancshares, Inc., 82 Fed. Res. Bull. 674 (1996) (permitting bank holding company to provide data processing and transmission services to unaffiliated institutions to assist those institutions in offering banking and financial services to their customers over the internet); Toronto-Dominion Bank, 83 Fed. Res. Bull. 335 (1997) (permitting bank holding company to provide computer software to broker-dealers and other financial institutions to permit those institutions to execute purchases and sales of securities for their customers).

Board of Governors of the Federal Reserve System, July 17, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc.02–18466 Filed 7–19–02; 8:45 am]

**BILLING CODE 6210–01–S**

## OFFICE OF GOVERNMENT ETHICS

### Submission for OMB Review; Comment Request: Proposed Slightly Revised OGE Form 450 Executive Branch Confidential Financial Disclosure Report

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Notice.

**SUMMARY:** The Office of Government Ethics has submitted a slightly revised version of its OGE Form 450 for confidential financial disclosure reporting under its existing executive branch regulations for review and three-year approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**DATES:** Comments by the agencies and the public on this proposal are invited and should be received by August 21, 2002.

**ADDRESSES:** Comments should be sent to Mr. Joseph F. Lackey, Jr.,Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503; Telephone: 202–395–7316.

**FOR FURTHER INFORMATION CONTACT:** Mary T. Donovan at the Office of Government Ethics; Telephone: 202–208–8000, ext. 1185; TDD: 202–208–8025; FAX: 202–208–8037. A copy of the proposed slightly revised OGE Form 450 and the rest of the OGE submission package to OMB may be obtained, without charge, by contacting Ms. Donovan.

**SUPPLEMENTARY INFORMATION:** The Office of Government Ethics has submitted a proposed slightly revised version of the OGE Form 450 Executive Branch Confidential Financial Disclosure Report for three-year approval (reclearance) by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35. The OGE Form 450 (OMB control # 3209–0006) collects information from covered department and agency officials as required under OGE's executive branchwide regulatory provisions in subpart I of 5 CFR part 2634. The OGE Form 450 serves as the uniform report form for collection, on a confidential basis, of financial information required by the OGE regulation from certain new entrant and incumbent employees of the Federal Government executive branch departments and agencies in order to allow ethics officials to conduct conflict of interest reviews and to resolve any actual or potential conflicts found.

The basis for the OGE regulation and the report form is two-fold. First, section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990) makes OGE responsible for the establishment of a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public financial disclosure under the Ethics in Government Act of 1978 (the ''Ethics Act''), as amended, 5 U.S.C. appendix. Second, section 107(a) of the Ethics Act, 5 U.S.C. appendix 107(a), further provides authority for OGE as the supervising ethics office for the executive branch of the Federal Government to require that appropriate executive agency employees file confidential financial disclosure reports, ''in such form as the supervising ethics office may prescribe.'' The current version of the OGE Form 450, adopted in 1999, together with the underlying OGE 5 CFR part 2634 executive branchwide financial disclosure regulation, issued in 1992 and modified at various times since, constitute the basic form OGE has prescribed for such confidential financial disclosure in the executive branch.

The changes to the OGE Form 450 that OGE is proposing at this time (as also referenced on the mark-up copy of

the form) are updating the contact information to reflect recent OGE organizational changes, formally adding a Part I (Assets and Income) continuation page (which the fillable versions on OGE's Web site already incorporate), and the forthcoming adjustment to the thresholds for reporting of gifts and travel reimbursements for regular employee annual filers in Part V of the OGE Form 450. Currently these thresholds require the reporting of gifts and reimbursements totaling more than $260 from any one source during the annual reporting period, subject to a de minimis exclusion for any item valued at $104 or less (which is not counted toward the overall threshold). The thresholds will have to be adjusted sometime this year when the General Services Administration redefines ''minimal value'' under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342(a)(5), for the three-year period 2002–2004. Currently, foreign gifts minimal value is set at $260 or less pursuant to 41 CFR 102–42.10 of GSA's regulations. Under section 102(a)(2)(A) and (B) of the Ethics Act, 5 U.S.C. appendix 102(a)(2)(A) and (B), the public financial disclosure reporting thresholds are pegged to any adjustment of minimal value over $250 (at the same time and by the same amount percentage). The Office of Government Ethics has extended the statutory thresholds to confidential financial disclosure reporting for the executive branch. *See* 5 CFR 2634.907(a)(3), so incorporating the reporting of gifts and reimbursements specified in 5 CFR 2634.304 for public reports but without amounts or values. Once GSA adjusts minimal value for foreign gifts, OGE will revise the gifts and reimbursements reporting thresholds of the OGE Form 450 and amend the underlying part 2634 regulation (public financial disclosure reporting would also be affected). The Office of Government Ethics will advise the departments and agencies of any such change, make the modified form available on its Web site, and coordinate with OMB on the paperwork and rulemaking aspects of the revision.

In addition, OGE has made proposed revisions to the form since publication of the first round paperwork notice (*see* below). The Office of Government Ethics is separately working on issuing its own proposed Privacy Act regulation and updating the OGE/GOVT–2 executive branchwide system of records notice (covering Confidential Statements of Employment and Financial Interests). As a result, the Privacy Act Statement, which includes paraphrases of the routine uses, on the proposed OGE Form 450 will need to be revised. As soon as possible, a summary of the anticipated changes relevant to that OGE Form 450 statement will be prepared for inclusion with the mark-up copy of the form as proposed for revision, which is available from OGE upon request. Once the new language in OGE's forthcoming Privacy Act regulation and systems notice is finalized (anticipated completion date is January 2003), OGE will request permission from OMB to modify the OGE Form 450 (with notice to OMB at that time) without further paperwork clearance even though the new wording will likely take effect after reclearance of the renewed form. As with the future gifts/reimbursements thresholds changes (see above), OGE will also advise the departments and agencies of the privacy statement changes, make the modified form available on the OGE Web site, and coordinate with OMB at that time.

The Office of Government Ethics will continue to make the OGE Form 450 available to departments and agencies and their reporting employees through the Forms, Publications & Other Ethics Documents section of OGE's Internet Web site (address: *http://www.usoge.gov*). This allows employees two different fillable options for preparing their report on a computer (in addition to a downloadable blank form), although a printout and manual signature of the form are still required unless specifically approved otherwise by OGE. Moreover, OGE also permits departments and agencies to develop or utilize their own electronic versions of the OGE Form 450 provided they precisely duplicate the paper original to the extent technically possible. While OGE sees no legal bar to electronic filing and electronic signatures for the OGE Form 450, agencies must meet the requirements of the Government Paperwork Elimination Act (GPEA) and other applicable laws and issues such as security, verification, non-repudiation, *etc.* Those agencies seeking to develop or utilize an electronic version of the OGE Form 450, and who have not so informed OGE, are asked to advise OGE's Deputy Director for Administration and Information Management of their intentions to do so and to provide assurance of their adherence to the previously mentioned requirements.

Moreover, since 1992 various departments and agencies have developed, with OGE review/approval, alternative reporting formats, such as certificates of no conflict, for certain classes of employees. Other agencies provide for additional disclosures pursuant to independent organic statutes and in certain other circumstances when authorized by OGE. In 1997, OGE itself developed the new OGE Optional Form 450–A (Confidential Certificate of No New Interests (Executive Branch)) for possible agency and employee use in certain years, if applicable. That optional form continues in use at various agencies. However, the OGE Form 450 remains the uniform executive branch report form for most of those executive branch employees who are required by their agencies to report confidentially on their financial interests. The OGE Form 450 is to be filed by each reporting individual with the designated agency ethics official at the executive department or agency where he or she is or will be employed.

Reporting individuals are regular employees whose positions have been designated by their agency under 5 CFR 2634.904 as requiring confidential financial disclosure in order to help avoid conflicts with their assigned responsibilities; under that section, all special Government employees (SGE) are also generally required to file. Agencies may, if appropriate under the OGE regulation, exclude certain regular employees or SGEs as provided in 5 CFR 2634.905. Reports are normally required to be filed within 30 days of entering a covered position (or earlier if required by the agency concerned), and again annually in the fall if the employee serves for more than 60 days in the position. As indicated in § 2634.907 of the OGE regulation, the information required to be collected includes assets and sources of income, liabilities, outside positions, employment agreements and arrangements, and gifts and travel reimbursements, subject to certain thresholds and exclusions.

Most of the persons who file this report form are current executive branch Government employees at the time they complete their report. However, some filers are private citizens who are asked to submit the report by the Senate committee considering their nomination for a PAS position (Presidential Appointment with Senate confirmation), or who are asked by their prospective agency to file a new entrant report prior to entering Government service in order to permit advance checking for any potential conflicts of interest and resolution thereof by agreement to recuse or divest, obtaining of a waiver, *etc.* Based on OGE's annual agency ethics program questionnaire responses for 1999, 2000, and 2001 (the

figures for the latter year now being available), OGE estimates that an average of approximately 264,509 OGE Form 450 report forms will be filed each year for the next three years throughout the executive branch (some 4,000 less than estimated in the first round **Federal Register** notice when the 2001 figures were not yet available). This estimate is based on average number of report forms filed branchwide for 1999 through 2001 as indicated in the Questionnaire responses, some 271,834 in 1999, 265,053 in 2000, and 256,639 in 2001 for a total of 793,526 with that number then divided by three and rounded to give the projected annual average of 264,509 reports. Of these reports, OGE estimates that no more than between 5% and 10%, or some 13,225 to 26,451 per year at most, will be filed by private citizens, those potential (incoming) regular employees whose positions are designated for confidential disclosure filing as well as potential special Government employees whose agencies require that they file their new entrant reports prior to assuming Government responsibilities. No termination reports are required for the OGE Form 450.

Each filing is estimated to take an average of one-and-one-half hours. The number of private citizens whose reports are filed each year with OGE itself is less than 10, but pursuant to 5 CFR 1320.3(c)(4)(i), the lower limit for this general regulatory-based requirement is set at 10 private persons (OGE-processed reports). This yields an annual reporting burden of 15 hours, the same as in OGE's current OMB inventory for this information collection. The remainder of the private citizen reports are filed with other departments and agencies throughout the executive branch.

On March 18, 2002, OGE published its first round notice of the forthcoming request for paperwork clearance for the proposed slightly revised OGE Form 450. *See* 67 FR 12017–12018. The Office of Government Ethics did not receive any comments in response to that notice, though one agency requested a copy of the proposed form.

In this second notice, public comment is again invited on the proposed slightly revised OGE Form 450 as set forth in this notice, including specifically views on: the need for and practical utility of this proposed modified collection of information; the accuracy of OGE's burden estimate; the enhancement of quality, utility and clarity of the information collected; and the minimization of burden (including the use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received, which will become a matter of public record.

Approved: July 15, 2002.

**Amy L. Comstock,**

*Director, Office of Government Ethics.*

[FR Doc. 02–18343 Filed 7–19–02; 8:45 am]

**BILLING CODE 6345–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Health Services Research Dissertation Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

*SEP Meeting on:* Health Services Research Dissertation Grant on Modeling Health Care Utilization.

*Date:* July 25, 2002 (Open on July 25 from 12:30 p.m. to 12:40 p.m. and closed for remainder of the teleconference meeting).

*Place:* Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, 4W5, Division of Scientific Review, Rockville, MD 20852.

*Contact Person:* Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 8, 2002.

**Carolyn M. Clancy,**

*Acting Director.*

[FR Doc. 02–18330 Filed 7–19–02; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Minority Students Predoctoral Fellowship Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

*SEP Meeting on:* Minority Students Predoctoral Fellowship Grant on Physician, Financial Incentives for Health Care Quality.

*Date:* July 26, 2002 (Open on July 26, from 11:30 a.m. to 11:40 a.m. and closed for remainder of the teleconference meeting).

*Place:* Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, 4W5, Division of Scientific Review, Rockville, MD 20852.

*Contact Person:* Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and

Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 8, 2002.

**Carolyn M. Clancy,**

*Acting Director.*

[FR Doc. 02–18331 Filed 7–19–02; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

### Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

*Name:* Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

*Time and Date:* 12 p.m.–8 p.m., August 27, 2002.

*Place:* YWCA of Oak Ridge, 1660 Oak Ridge Turnpike, Oak Ridge, Tennessee, 37830. Telephone: (865) 482–9922.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Background:* A Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE, delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

*Purpose:* This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

*Matters To Be Discussed:* The agenda includes a discussion of the public health assessment, updates from the Public Health Assessment, Health Needs Assessment, Agenda, Guidelines and Procedures, and Outreach and Communications Workgroups. Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax 404/498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 16, 2002.

**John Burckhardt,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–18359 Filed 7–19–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 02207]**

### Core State Injury Surveillance and Program Development; 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 Core State Injury Surveillance and Program Development, focused in two phases: Phase I Basic Core Injury Program Development; Phase II Enhanced Core Injury Program Development. This Program addresses ''Healthy People 2010'' focus area of Injury and Violence Prevention.

The purposes of the cooperative agreements are to develop, implement and evaluate injury core and/or surveillance programs in one of the specified injury-related priority areas.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control: Enhance the capacity of states to implement effective injury prevention programs.

#### B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a), 317(k)(2), 391, 392, 394, and 394A [42 U.S.C. 241(a), 247b(k)(2), 280b, 280b–1, 280b–2, 280b–3] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

#### C. Eligible Applicant

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. In consultation with States, assistance may be provided to political subdivisions of States.

**Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, or loan.

#### D. Availability of Funds

Approximately $300,000 is available in FY 2002 to fund up to four awards for Phase I Basic Core Injury Development or Phase II Enhanced Core Injury Development. The average award amount would be $75,000. It is expected that the award will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of three years. Funding estimates may change.

Matching funds are not required for this program.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and on the availability of funds.

#### 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*

Phase I: Basic Core Injury Program Development

a. Establish an injury focal point and coordinating process within the public health agency.

b. Establish an injury advisory council to address issues relevant to injury prevention and control in the State.

c. Conduct data review and analysis to determine the availability of data about injury problems and the potential for solutions in the State and region in comparison to the nation. Develop an annotated report containing this information.

d. Identify and catalog current and potential injury prevention and control resources within the State.

e. Develop a State injury plan which is based on data and which is prioritized for the prevention and control of injuries and serves as a resource for other State agencies.

Phase II: Enhanced Core Injury Program Development

In addition to the activities indicated for Phase I, above, applicant will also:

a. Analyze existing data to define the magnitude of the injury problem in the State, the populations at risk, and the causes of injury.

b. Use the 11 recommended core data sets to produce and disseminate written reports on injuries within the State and conduct national comparisons. (To obtain a copy of Consensus recommendations, see Section J. ''Where to Obtain Additional Information''.)

c. Evaluate data to determine whether data sources can be linked and whether linking them provides any benefit to prevention.

d. Develop or update a State injury plan which is based on data and which is prioritized for the prevention and control of injuries and serve as a resource for other State agencies.

e. Develop, update, or expand an injury advisory council to provide input on issues relevant to injury prevention and control in the State.

f. Provide coordination for injury activities of the public health agency.

g. Participate in a process for establishing and reviewing some components (e.g., data collection and analysis; coordination and collaboration; and technical support and training) of the five minimum components used to define a Core Injury Program. Share ''lessons learned'' about and through this process with other States.

*2. CDC Activities*

a. Provide consultation on planning, implementation, evaluation, data analysis, and dissemination of results.

b. Provide coordination between and among the States, by assisting in the transfer of information and methods developed to other programs, and providing up-to-date information.

c. Provide technical assistance for the Behavioral Risk Factor Surveillance System (BRFSS) and other available specific injury surveillance modules when requested.

d. Operate a process of evaluation and improvement in which lessons learned are shared among other States implementing the same type of program.

e. Coordinate compilation of ''lessons learned'' through this process and communicate them.

**F. Content**

*Pre-Application Workshop for Applicants*

For interested applicants, a telephone conference call for pre-application technical assistance will be held on July 24, from 2:00 pm to 3:00 pm, Eastern Standard Time. The conference name is NCIPC Core Injury, the bridge number for the conference call is 404–639–4100 or 1–800–713–1971 and the pass code is 112180 If you have a problem during your conference, you may press *0 at anytime to signal the attendant. If you have questions about the technical operations of the teleconference equipment, please call 404–639–7550.

*Letter of Intent (LOI)*

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than one page single spaced, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to estimate the potential review workload and avoid conflict of interest in the review. It should include the following information, the name, organization, address, and telephone number of the Principal Investigator and whether you are applying for Phase I or Phase II funding.

*Application*

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Subject to the limitations described under Eligible Applicants, Section B above, States may choose to apply for Phases I or II. A separate application should be submitted for each Phase (I, II) applied for. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and unreduced 12 pt Times Roman (or equivalent size) font. Number each page consecutively and provide a complete Table of Contents. The entire application, with appendices, should be no longer than 70 pages total. The application must include a one-page abstract and summary of the proposed effort. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

**G. Submission and Deadline**

*Letter of Intent (LOI)*

On or before July 31, 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 0937–0189). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

They may also be obtained by calling the Grants Management Specialist listed in this announcement.

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable) Narrative

Forms may not be submitted electronically.

The application must be received by 5 p.m. Eastern Time, August 21, 2002. Submit the application to: Technical Information Management—PA02207, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

*Deadline:* Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants

sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

**H. Evaluation Criteria**

*Application*

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

*1. Need for Core Program Development (30 points)*

For Phase I Applicants

The extent to which the applicant describes the need for Core Program funding and the minimal nature of their injury program.

The extent to which the applicant describes the level of agency resources directed toward injury activities, if applicable, and how this additional funding will contribute to efforts to initiate or improve existing or planned injury surveillance activities.

The extent to which the applicant defines the agency's commitment to coordinating injury prevention and control activities through a focal point.

For Phase II Applicants

The extent to which the applicant describes an existing injury program which continually maintains capacity to conduct injury activities.

*2. Methods and Staffing (30 points)*

Phase I and II

The extent to which the applicant provides: (1) a detailed description of how staffing resources (including epidemiological resources) will be allocated and used to accomplish each objective and overall program goals, and which includes designation of a injury program director or equivalent with responsibility for directing and coordinating an injury prevention and control program; (2) a reasonable and complete schedule for implementing and completing all activities; (3) a description of the roles of each unit, organization, or agency, and evidence of coordination, supervision, and degree of commitment (e.g., time, in-kind, financial) of staff, organizations, and agencies involved in injury surveillance activities; (4) evidence of access or assignment of epidemiological expertise for performing routine data review and analysis activities and providing technical advice and consultation for other State agencies.

*3. Evaluation (20 points)*

Phase I and II

The extent to which the proposed evaluation system is detailed, addresses goals and objectives of the program, and will document program process, effectiveness, and impact. The extent to which the applicant demonstrates potential data sources for evaluation purposes and methods to evaluate the data sources, and documents staff availability, expertise, experience, and capacity to perform the evaluation.

The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions and continuous program improvement is present.

*4. Goals and Objectives (10 points)*

Phase I and II

The extent to which the applicant includes goals which are relevant to the purpose of the proposal and feasible to accomplish during the project period.

The extent to which the applicant has included objectives which are feasible to accomplish during the budget period, and which address all activities necessary to accomplish the purpose of the proposal.

The extent to which the objectives are specific, time-framed, measurable, and realistic.

*5. Collaboration (10 points)*

Phase I and II

The extent to which relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities are clear, complete and provide for complementary or supplementary interactions.

The extent to which advisory group membership and roles are clear and appropriate.

The extent to which relationships with local academic institutions are completely described and appropriate.

The extent to which surveillance, if any, of core injury conditions will be developed and coordinated to enable comparability of Traumatic Brain Injury (TBI) and other injury data with other States and jurisdictions.

*6. Budget and Justification (not scored)*

Phase I and II

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

**I. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with the original plus two copies of:

1. Semi-annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the announcement.

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

AR–14 Accounting System Requirements

**J. Where To Obtain Additional Information**

This and other CDC announcements can be found on the CDC home page on the Internet: *http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Angie Nation, Grants Management Specialist—PA 02207, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2719, E-mail address: *Acn4@cdc.gov.*

For program technical assistance, contact: Cecil Threat, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway N.E., Mailstop F42, Atlanta, GA 30341–3724, Telephone: (770) 488–1236, Fax: 770–488–4338, E-mail: CThreat@cdc.gov.

Dated: July 15, 2002.

**Sandra R. Manning,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–18362 Filed 7–19–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 02109]**

### War-Related Mental Health and Trauma Assessment Program; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY)2002 funds for cooperative agreements for War-Related Mental Health & Trauma Assessment program was published on July 8, 2002, Volume 67, Number 130, pages 45121–45123. The notice is amended as follows: On page 45121, column 2, paragraph ''D. Availability of Funds'', the following change is made: It is expected that the awards will begin on or about September 1, 2002.

Dated: July 16, 2002.

**Sandra R. Manning,**

*Director, Procurement and Grants Office, Center for Disease Control and Prevention.*

[FR Doc. 02–18358 Filed 7–19–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–R–243]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Agreement Application, Health Care Prepayment Plan and Supporting Regulations in 42 CFR 417.800–.840; *Form No.:* CMS–R–243 (OMB# 0938–0768 ); *Use:* An organization must meet certain regulatory requirements to be a Health Care Prepayment Plan that is eligible for a Medicare Section 1833 agreement. The application is the collection form to obtain the information from an organization that enables CMS staff to determine compliance with the regulations; *Frequency:* one time submission; *Affected Public:* Business or other for-profit, Not-for-profit institutions, State, local and Tribal Government; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 750.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 12, 2002.

**John P. Burke III,**

*Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 02–18431 Filed 7–19–02; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–843]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request: New Collection; Title of Information Collection:* Durable Medicare Equipment Regional Carrier, Certificate of Medical Necessity; *Form No.:* CMS–843 (OMB# 0938–NEW—The term ''new'' means we are asking for a new OMB Number; however, nothing related to this collection has changed); *Use:* This information is needed to correctly process claims and ensure that claims are properly paid. These forms contain medical information necessary to make a appropriate claim determination. Suppliers and physicians will complete these forms; *Frequency:* On Occasion; *Affected Public:* Business or other for-profit, Federal Government, Not-for-profit institutions; *Number of Respondents:* 2,700;*Total Annual Responses:* 129,000; *Total Annual Hours:* 32,250.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235,Washington, DC 20503.

Dated: July 11, 2002.

**John P. Burke III,**

*Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 02–18432 Filed 7–19–02; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare and Medicaid Services

**[Document Identifier: CMS–10062]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New Collection; *Title of Information Collection:* Collection of Diagnostic Data from Medicare+Choice Organizations for Risk Adjusted Payments and Supporting Regulations Part 422 Subparts F and G; *Form No.:* CMS–10062 (OMB# 0938-New ); *Use:* CMS requires hospital inpatient diagnostic data as well as diagnostic data from ambulatory settings (hospital outpatient and physician) from Medicare+Choice organizations to develop and implement risk adjustment methodology as required by the Balanced Budget Act of 1997 and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 156; *Total Annual Responses:* 6,605,691; *Total Annual Hours:* 18,877.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235,Washington, DC 20503.

Dated: July 11, 2002.

**John P. Burke III,**

*Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 02–18433 Filed 7–19–02; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0296]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational New Drug Regulations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed

extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

**DATES:** Submit written or electronic comments on the collection of information by September 20, 2002.

**ADDRESSES:** Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Investigational New Drug (IND) Regulations—Part 312 (21 CFR Part 312)—(OMB Control Number 0910–0014)—Extension**

FDA is requesting OMB approval for the reporting and recordkeeping requirements contained in the FDA regulation ''Investigational New Drug Application'' part 312 (21 CFR part 312). This regulation implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts. The investigational new drug application (IND) regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other agency scientific reviewers assigned responsibility for overseeing the specific study. The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements are dictated by the scientific procedures and human subject safeguards that must be followed in the clinical tests of investigational new drugs.

The IND information collection requirements provide the means by which FDA can: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; and (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry in response to the IND regulations, FDA cannot authorize or monitor the clinical investigations which must be conducted prior to authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, to assure subject safety, to assure that a study will be conducted ethically, and to increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the drug should be marketed and available for use in medical practice.

There are two forms that are required under part 312: Form FDA–1571—''Investigational New Drug Application.''

A person who intends to conduct a clinical investigation submits this form to FDA. It includes: (1) A cover sheet containing background information on the sponsor and investigator; (2) a table of contents; (3) an introductory statement and general investigational plan; (4) an investigator's brochure describing the drug substance; (5) a protocol for each planned study; (6) chemistry, manufacturing, and control information for each investigation; (7) pharmacology and toxicology information for each investigation; and (8) previous human experience with the investigational drug.

Form FDA–1572—''Investigator Statement.'' Before permitting an investigator to begin participation in an investigation, the sponsor must obtain and record this form. It includes background information on the investigator and the investigation, and a general outline of the planned investigation and the study protocol.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements in part 312.

TABLE 1.—REPORTING REQUIREMENTS

| 21 CFR Section | Explanations |
|---|---|
| 312.7(d) | Applications for permission to sell an investigational new drug. |
| 312.10(a) | Applications for waiver of requirements under part 312. Estimates for this requirement are included under §§ 312.23 and 312.31. |
| 312.20(c) | Applications for investigations involving an exception from informed consent under § 50.24 (21 CFR 50.24). Estimates for this requirement are included under § 312.23. |
| 312.23 | INDs (content and format). |
| 312.23(a)(1) | Cover sheet FDA–1571. |
| 312.23(a)(2) | Table of contents. |
| 312.23(a)(3) | Investigational plan for each planned study. |
| 312.23(a)(5) | Investigator's brochure. |
| 312.23(a)(6) | Protocols—Phase 1, 2, and 3. |
| 312.23(a)(7) | Chemistry, manufacturing, and control information. |
| 312.23(a)(7)(iv)(*a*),(*b*),(*c*) | A description of the drug substance, a list of all components, and any placebo used. |
| 312.23(a)(7)(iv)(*d*) | Labeling: Copies of labels and labeling to be provided each investigator. |
| 312.23(a)(7)(iv)(*e*) | Environmental impact analysis regarding drug manufacturing and use. |
| 312.23(a)(8) | Pharmacological and toxicology information. |
| 312.23(a)(9) | Previous human experience with the investigational drug. |
| 312.23(a)(10) | Additional information. |
| 312.23(a)(11) | Relevant information. |
| 312.23(f) | Identification of exception from informed consent. |
| 312.30 | Protocol amendments. |
| 312.30(a) | New protocol. |
| 312.30(b) | Change in protocol. |
| 312.30(c) | New investigator. |
| 312.30(d) | Content and format. |
| 312.30(e) | Frequency. |
| 312.31 | Information amendments. |
| 312.31(b) | Content and format. |
| | Chemistry, toxicology, or technical information. |
| 312.32 | Safety reports. |
| 312.32(c)(1) | Written reports to FDA and to investigators. |
| 312.32(c)(2) | Telephone reports to FDA for fatal or life-threatening experience. |
| 312.32(c)(3) | Format or frequency. |
| 312.32(d) | Follow up submissions. |
| 312.33 | Annual reports. |
| 312.33(a) | Individual study information. |
| 312.33(b) | Summary information. |
| 312.33(b)(1) | Adverse experiences. |
| 312.33(b)(2) | Safety report summary. |
| 312.33(b)(3) | List of fatalities and causes of death. |
| 312.33(b)(4) | List of discontinuing subjects. |
| 312.33(b)(5) | Drug action. |
| 312.33(b)(6) | Preclinical studies and findings. |
| 312.33(b)(7) | Significant changes. |
| 312.33(c) | Next year general investigational plan. |
| 312.33(d) | Brochure revision. |
| 312.33(e) | Phase I protocol modifications. |
| 312.33(f) | Foreign marketing developments. |
| 312.35 | Treatment use of investigational new drugs. |
| 312.35(a) | Treatment protocol submitted by IND sponsor. |
| 312.35(b) | Treatment IND submitted by licensed practitioner. |
| 312.36 | Requests for emergency use of an investigational new drug. |
| 312.38(b) and (c) | Notification of withdrawal of an IND. |
| 312.42(e) | Sponsor requests that a clinical hold be removed and submits a complete response to the issues identified in the clinical hold order. |
| 312.44(c) and (d) | Opportunity for sponsor response to FDA when IND is terminated. |
| 312.45(a) and (b) | Sponsor request for or response to inactive status determination of an IND. |
| 312.47(b) | ''End-of-Phase 2'' meetings and ''Pre-NDA'' meetings. |
| 312.53(c) | Investigator information. |
| | Investigator report (Form FDA–1572) and narrative; Investigator's background information; phase 1 outline of planned investigation; and phase 2 outline of study protocol; financial disclosure information. |
| 312.54(a) and (b) | Sponsor submissions concerning investigations involving an exception from informed consent under § 50.24. |
| 312.55(b) | Sponsor reports to investigators on new observations, especially adverse reactions and safe use. Only ''new observations'' are estimated under this section; investigator brochures are included under § 312.23. |

TABLE 1.—REPORTING REQUIREMENTS—Continued

| 21 CFR Section | Explanations |
|---|---|
| 312.56(b), (c), and (d) | Sponsor monitoring of all clinical investigations, investigators, and drug safety; notification to FDA. |
| 312.58(a) | Sponsor's submission of records to FDA on request. |
| 312.64 | Investigator reports to the sponsor. |
| 312.64(a) | Progress reports. |
| 312.64(b) | Safety reports |
| 312.64(c) | Final reports. |
| 312.64(d) | Financial disclosure reports. |
| 312.66 | Investigator reports to Institutional Review Board. Estimates for this requirement are included under § 312.53. |
| 312.70(a) | Investigator disqualification; opportunity to respond to FDA. |
| 312.83 | Sponsor submission of treatment protocol. Estimates for this requirement are included under §§ 312.34 and 312.35. |
| 312.85 | Sponsors conducting phase 4 studies. Estimates for this requirement are included under § 312.23, and under 21 CFR 314.50, 314.70, and 314.81 in 0910–0001. |
| 312.110(b) | Request to export an investigational drug. |
| 312.120(b) and (c)(2) | Sponsor's submission to FDA for use of foreign clinical study to support an IND. |
| 312.120(c)(3) | Sponsor's report to FDA on findings of independent review committee on foreign clinical study. |
| 312.130(d) | Request for disclosable information for investigations involving an exception from informed consent under § 50.24. |

TABLE 2.—RECORDKEEPING REQUIREMENTS

| 21 CFR Section | Explanations |
|---|---|
| 312.52(a) | Transfer of obligations to a contract research organization. |
| 312.57(a) and (b) | Sponsor recordkeeping. |
| 312.59 | Sponsor recordkeeping of disposition of unused supply of drugs. Estimates for this requirement are included under § 312.57. |
| 312.62(a) | Investigator recordkeeping of disposition of drugs. |
| 312.62(b) | Investigator recordkeeping of case histories of individuals. |
| 312.160(a)(3) | Records maintenance: Shipment of drugs for investigational use in laboratory research animals or in vitro tests. |
| 312.160(c) | Shipper records of alternative disposition of unused drugs. |

In tables 3 through 5 of this document, the estimates for ''number of respondents,'' ''number of responses per respondent,'' and ''total annual responses'' were obtained from the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) reports and data management systems for submissions received in 2001 and from other sources familiar with the number of submissions received under part 312. The estimates for ''hours per response'' were made by CDER and CBER individuals familiar with the burden associated with these reports and from estimates received from the pharmaceutical industry.

TABLE 3.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN FOR HUMAN DRUGS[1]

| 21 CFR Section | Number of Respondents | Number of Responses per Respondent | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 312.7(d) | 5 | 1.4 | 7 | 24 | 168 |
| 312.23(a) through (f) | 1,506 | 1.2 | 1,872 | 1,600 | 2,995,200 |
| 312.30(a) through (e) | 1,050 | 15 | 15,705 | 284 | 4,460,220 |
| 312.31(b) | 1,037 | 8 | 8,375 | 100 | 837,500 |
| 312.32(c) and (d) | 546 | 22.6 | 12,366 | 32 | 395,712 |
| 312.33(a) through (f) | 1,608 | 2.6 | 4,202 | 360 | 1,512,720 |
| 312.35(a) and (b) | 1 | 1 | 1 | 300 | 300 |
| 312.36 | 281 | 1 | 302 | 16 | 4,832 |
| 312.38(b) and (c) | 466 | 1.3 | 608 | 28 | 17,024 |
| 312.42(e) | 63 | 1.2 | 78 | 284 | 22,152 |
| 312.44(c) and (d) | 40 | 1 | 42 | 16 | 672 |
| 312.45(a) and (b) | 244 | 1.4 | 355 | 12 | 4,260 |
| 312.47(b) | 130 | 1.8 | 233 | 160 | 37,280 |
| 312.53(c) | 20,428 | 1 | 20,428 | 80 | 1,634,240 |
| 312.54(a) and (b) | 1 | 1 | 1 | 48 | 48 |
| 312.55(b) | 388 | 435 | 168,775 | 48 | 8,101,200 |
| 312.56(b), (c), and (d) | 2 | 1 | 2 | 80 | 160 |

TABLE 3.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN FOR HUMAN DRUGS[1]—Continued

| 21 CFR Section | Number of Respondents | Number of Responses per Respondent | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 312.58(a) | 75 | 4.2 | 322 | 8 | 2,576 |
| 312.64(a) through (d) | 11,574 | 3 | 34,722 | 24 | 833,328 |
| 312.70(a) | 2 | 1 | 2 | 40 | 80 |
| 312.110(b) | 32 | 8.1 | 261 | 75 | 19,575 |
| 312.120(b) and (c)(2) | 180 | 2 | 361 | 168 | 60,548 |
| 312.120(c)(3) | 2 | 2 | 4 | 40 | 160 |
| 312.130(d) | 4 | 1 | 4 | 8 | 32 |
| 312.52(a) | 1,104 | 3 .1 | 3,495 | 2 | 6,990 |
| 312.57(a) and (b) | 1,104 | 34.5 | 38,088 | 100 | 3,808,800 |
| 312.62(a) | 9,522 | 2 | 19,044 | 40 | 761,760 |
| 312.62(b) | 9,522 | 10 | 95,220 | 40 | 3,808,800 |
| 312.160(a)(3) | 301 | 1.4 | 425 | .5 | 213 |
| 312.160(c) | | 1.4 | 425 | .5. | 213 |
| Total | | | | | 29,326,763 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS[1]

| 21 CFR Section | No. of Respondents | No. of Responses per Response | Total Annual Responses | Hours per Responses | Total Hours |
|---|---|---|---|---|---|
| 312.7(d) | 22 | 1.4 | 31 | 24 | 744 |
| 312.10(a) | 9 | 7.9 | 71 | 40 | 2,840 |
| 312.23(a) and (f) and 312.120(b), (c)(2), and (c)(3) | 376 | 1.4 | 535 | 1,600 | 856,000 |
| 312.30(a) through (e) | 724 | 5.6 | 4,038 | 284 | 1,146,792 |
| 312.31(b) | 268 | 9.0 | 2,399 | 100 | 239,900 |
| 312.32(c) and (d) and 312.56(c) | 334 | 12.8 | 4,261 | 32 | 136,352 |
| 312.33(a) and (f) and 312.56(c) | 614 | 2.6 | 1,615 | 350 | 565,250 |
| 312.35(a) and (b) | 1 | 1 | 1 | 300 | 300 |
| 312.36 | 19 | 4 | 76 | 16 | 1,216 |
| 312.38(b) | 172 | 2.1 | 358 | 28 | 10,024 |
| 312.38(c) | 172 | 2.1 | 358 | 160 | 57,280 |
| 312.44(c) and (d) | 0 | 0 | 0 | 0 | 0 |
| 312.45(a) and (b) | 70 | 1.7 | 120 | 12 | 1,440 |
| 312.47(b) | 60 | 1.1 | 68 | 160 | 10,880 |
| 312.53(c) | 322 | 5.9 | 1,904 | 80 | 152,320 |
| 312.54(a) and (b) | 0 | 0 | 0 | 0 | 0 |
| 312.55(b) | 139 | 2.4 | 331 | 48 | 15,888 |
| 312.56(b) and (d) | 12 | 1.7 | 20 | 80 | 1,600 |
| 312.58(a) | 19 | 1 | 19 | 8 | 152 |
| 312.64(a) and (d) | 5,713 | 1 | 5,713 | 24 | 137,112 |
| 312.110(b) | 9 | 2.4 | 22 | 75 | 1,650 |
| 312.130(d) | 1 | 1 | 1 | 0.5 | 0.5 |
| Total | | | | | 3,337,740.5 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 5.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 312.52(a) recordkeeping | 113 | 1 | 113 | 5 | 565 |
| 312.57(a) and (b) recordkeeping | 1,432 | 2 | 2,859 | 100 | 285,900 |
| 312.62(a) recordkeeping | 5,713 | 1 | 5,713 | 40 | 228,520 |
| 312.62(b) recordkeeping | 5,713 | 12.5 | 71,355 | 40 | 2,854,200 |
| 312.160(a) recordkeeping | 1,432 | 7.5 | 10,708 | 0.5 | 5,354 |
| 312.160(c) recordkeeping | 1,432 | 2.5 | 3,573 | 0.5 | 1,786.5 |
| Total biologics recordkeeping hours | | | | | 3,376,325.5 |
| Total biologics burden hours | | | | | 3,337,740.5 |
| Subtotal | | | | | 6,714,066 |
| Human Drugs | | | | | 29,326,763 |
| Biologics | | | | | 6,714,066 |

TABLE 5.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]—Continued

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| Total | | | | | 36,040,829 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 15, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–18318 Filed 7–19–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0308]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and ''Lookback'' Requirements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the regulations of FDA's current good manufacturing practices (CGMP) and related regulations for blood and blood components, and ''lookback'' requirements.

**DATES:** Submit written or electronic comments on the collection of information by September 20, 2002.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

### Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and ''Lookback'' Requirements (OMB Control Number 0910–0116)—Extension

Under the statutory requirements contained in section 351 of the Public Health Service Act (42 U.S.C. 262), no blood, blood component, or derivative may move in interstate commerce unless: (1) It is propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license; (2) the product complies with regulatory standards designed to ensure safety, purity, and potency; and (3) it bears a label plainly marked with the product's proper name, manufacturer, and expiration date. In addition, under the biologics licensing and quarantine provisions in sections 351 to 361 of the Public Health Service Act (42 U.S.C. 262 to 264) and the general administrative provisions under sections 501 to 503, 505 to 510, and 701 to 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 to 353, 355 to 360, and 371 to 374), FDA has the authority to issue regulations designed to protect the public from unsafe or ineffective biological products and to issue regulations necessary to prevent the introduction, transmission, or spread communicable diseases. The CGMP and related regulations implement FDA's statutory authority to ensure the safety, purity, and potency of blood and blood components. The lookback regulations are intended to help ensure the continued safety of the blood supply by providing necessary information to users of blood and blood components and appropriate notification of recipients of transfusion at increased risk for transmitting human immunodeficiency virus (HIV) infection.

The information collection requirements in the CGMP and lookback regulations provide FDA with the necessary information to perform its duty to ensure the safety, purity, and potency of blood and blood components. These requirements establish accountability and traceability in the processing and handling of blood and blood components and enables FDA to perform meaningful inspections. The recordkeeping requirements serve preventative and remedial purposes. The disclosure requirements identify the various blood and blood components and important properties of the product, demonstrate that the CGMP requirements have been met, and facilitate the tracing of a product back to its original source. The reporting requirements inform FDA of any deviations that occur and that may require immediate corrective action.

Section 606.100(b) (21 CFR 606.100(b)) requires that written standard operating procedures (SOPs) be maintained for the collection, processing, compatibility testing, storage, and distribution of blood and blood components used for transfusion and manufacturing purposes. Section 606.100(c) requires the review of all pertinent records to a lot or unit of blood prior to release. Any unexplained discrepancy or failure of a lot or unit of final product to meet any of its specifications must be thoroughly investigated, and the investigation, including conclusions and followup, must be recorded. Section 606.110(a) requires a physician to certify in writing that the donor's health permits plateletpheresis or leukapheresis if a variance from additional regulatory standards for a specific product is used when obtaining the product from a specific donor for a specific recipient. Section 606.110(b) requires establishments to request prior Center for Biologics Evaluation and Research (CBER) approval for plasmapheresis of donors who do not meet donor requirements. Section 606.151(e) (21 CFR 606.151(e)) requires that records of expedited transfusions in life-threatening emergencies be maintained. So that all steps in the collection, processing, compatibility testing, storage and distribution, quality control, and transfusion reaction reports and complaints for each unit of blood and blood components can be clearly traced, § 606.160 (21 CFR 606.160) requires that legible and indelible contemporaneous records of each significant step be made and maintained for no less than 5 years. Section 606.165 (21 CFR 606.165) requires that distribution and receipt records be maintained to facilitate recalls, if necessary. Section 606.170(a) (21 CFR 606.170(a)) requires records to be maintained of any reports of complaints of adverse reactions as a result of blood collection or transfusion. Each such report must be thoroughly investigated, and a written report, including conclusions and followup, must be prepared and maintained. Section 606.170(b) requires that fatal complications of blood collection and transfusions be reported to FDA as soon as possible and that a written report shall be submitted within 7 days. Section 610.46(a) (21 CFR 610.46(a)) requires blood establishments to notify consignees, within 72 hours, of repeatedly reactive tests results so that previously collected blood and blood components are appropriately quarantined. Section 610.46(b) requires blood establishments to notify consignees of licensed, more specific test results for HIV within 30 calendar days after the donors's repeatedly reactive test. Section 610.47(b) (21 CFR 610.47(b)) requires transfusion services not subject to Centers for Medicare and Medicaid Services (CMS) regulations to notify physicians of prior donation recipients or to notify recipients themselves of the need for HIV testing and counseling. In addition to the CGMP's in 21 CFR part 606, there are regulations in part 640 (21 CFR part 640) that require additional standards for certain blood and blood components as follows: Sections 640.3(a); 640.4(a); 640.25(b)(4) and (c)(1); 640.27(b); 640.31(b); 640.33(b); 640.51(b); 640.53(c); 640.56(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.66; 640.71(b)(1); 640.72; 640.73; and 640.76(a) and (b). The information collection requirements and estimated burdens for these regulations are included in the 21 CFR part 606 burden estimates, as described below.

Respondents to this collection of information are licensed and unlicensed blood establishments inspected by FDA, and other transfusion services inspected by CMS.

Based on FDA's registration system, there are approximately 2,841 registered blood establishments inspected by FDA. Of these 2,841 establishments, approximately 1,349 perform pheresis, approximately 1,041 annually collect 27 million units of Whole Blood, blood components including Source Plasma, and Source Leukocytes and are required to follow FDA ''lookback'' procedures, and approximately 166 are registered transfusion services that are not subject to CMS's ''lookback'' regulations. Based on CMS records there are an estimated 4,980 transfusion services.

The following reporting and recordkeeping estimates are based on information provided by industry, CMS, and FDA experience. In table 1 of this document, we estimate that there are approximately 3,500 repeat donors that will test reactive on a screening test for HIV. We estimate that each repeat donor has donated two previous times and an average of three components were made from each donation. Under § 610.46(a) and (b), this estimate results in 21,000 (3,500 x 2 x 3) notifications of the HIV screening test results to consignees by collecting establishments for the purpose of quarantining affected blood and blood components, and another 21,000 (3,500 x 2 x 3) notifications to consignees of subsequent test results. Under § 606.110(b), licensed establishments submit supplements to their biologics license applications to request prior CBER approval of plasmapheresis donors who do not meet donor requirements. The information collection requirements for § 606.110(b) are reported under OMB control number 0910–0338.

In table 2 of this document, the recordkeeping chart reflects the estimate that 95 percent of the recordkeepers, which collect 98 percent of the blood supply, had developed SOP's as part of their customary and usual business practice. Establishments may minimize burdens associated with CGMP and related regulations by using model SOP's developed by industries' accreditation organizations. These accreditation organizations represent almost all registered blood establishments.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 606.170(b)[2] | 70 | 1 | 70 | 20 | 1,400 |
| 610.46(a) | 1,041 | 20 | 21,000 | 0.17 | 3,570 |
| 610.46(b) | 1,041 | 20 | 21,000 | 0.17 | 3,570 |
| 610.47(b) | 166 | 0.7 | 116 | 1 | 116 |
| Total | | | | | 8,656 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The reporting requirement in § 640.73, which addresses the reporting of fatal donor reactions, is included in the estimate for § 606.170(b).

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 606.100(b)[2] | 249[5] | 1 | 249 | 24 | 5,976 |
| 606.100(c) | 249[5] | 10 | 2,490 | 1 | 2,490 |
| 606.110(a)[3] | 67[6] | 5 | 335 | 0.5 | 168 |
| 606.151(e) | 249[5] | 12 | 2,988 | 0.083 | 248 |
| 606.160[4] | 249[5] | 2,169 | 540,000 | 0.5 | 270,000 |
| 606.165 | 249[5] | 2,169 | 540,000 | 0.083 | 44,820 |
| 606.170(a) | 249[5] | 12 | 2,988 | 1 | 2,988 |
| Total | | | | | 326,690 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]The recordkeeping requirements in §§ 640.3(a)(1), 640.4(a)(1), and 640.66, which address the maintenance of SOPs, are included in the estimate for § 606.100(b).
[3]The recordkeeping requirements in § 640.27(b), which address the maintenance of donor health records for the plateletpheresis, are included in the estimate for § 606.110(a).
[4]The recordkeeping requirements in §§ 640.3(a)(2); 640.3(f); 640.4(a)(2); 640.25(b)(4) and (c)(1); 640.31(b); 640.33(b); 640.51(b); 640.53(b) and (d); 640.61; 640.63(b)(3), (e)(1), and (e)(3); 640.65(b)(2); 640.71(b)(1); 640.72; and 640.76(a) and (b), which address the maintenance of various records, are included in the estimate for § 606.160.
[5]Five percent of CMS and FDA-registered blood establishments (0.05 x 4,890).
[6]Five percent of pheresis establishments (1,349).

Dated: July 15, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–18320 Filed 7–19–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0309]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Reclassification Petitions for Medical Devices

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for reclassification petitions for medical devices.

**DATES:** Submit written and electronic comments on the collection of information by September 20, 2002.

**ADDRESSES:** Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Reclassification Petitions for Medical Devices—21 CFR 860.123 (OMB Control Number 0910–0138)—Extension**

FDA has the responsibility under sections 513(e) and (f), 514(b), 515(b), and 520(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(e) and (f), 360d(b), 360e(b), and 360j(l)) and part 860 (21 CFR part 860), subpart C, to collect data and information contained in reclassification petitions. The reclassification provisions of the act allow any person to petition for reclassification of a device from any one of the three classes (I, II, and III) to another class. The reclassification content regulation (§ 860.123) requires the submission of sufficient, valid scientific evidence demonstrating that the proposed classification will provide a reasonable assurance of safety and effectiveness of the device for its intended use. The reclassification provisions of the act serve primarily as a vehicle for manufacturers to seek reclassification from a higher to a lower class, thereby reducing the regulatory requirements applicable to a particular device. The reclassification petitions requesting classification from class III to class II or class I, if approved, provide an alternative route to the market in lieu

of premarket approval for class III devices.

*Description of respondents*: Device manufacturers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 860.123 | 6 | 1 | 6 | 500 | 3,000 |
| Totals | | | | | 3,000 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on current trends and actual reclassification petitions received, FDA anticipates that six petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data, averages 500 hours per petition. This average is based upon estimates by FDA administrative and technical staff who are familiar with the requirements for submission of a reclassification petition, have consulted and advised manufacturers on these requirements, and have reviewed the documentation submitted.

Dated: July 15, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–18463 Filed 7–19–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0284]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling: Health Claims; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection of the record retention requirement of the soy protein/coronary heart disease health claim.

**DATES:** Submit written or electronic comments on the collection of information by September 20, 2002.

**ADDRESSES:** Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520) Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Food Labeling: Health Claims; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim (21 CFR 101.82(c)(2)(ii)(B)) (OMB Control Number 0910–0428)—Extension**

This regulation authorizes a health claim for food labels about soy protein and coronary heart disease (CHD). Section 403(r)(3)(A)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(3)(A)(i)) provides for the use of food label statements characterizing a relationship of any nutrient of the type required to be in the label or labeling of the food to a disease or a health related condition only where that statement meets the requirements of the regulations issued by the Secretary of Health and Human Services to authorize the use of such a health claim. To bear the soy protein and CHD health claim, foods must contain at least 6.25-gram soy protein per reference amount customarily consumed. Analytical methods for measuring total protein can be used to quantify the amount of soy protein in foods that contain soy as the sole source of protein. At the present time, there is no validated analytical methodology available to quantify the amount of soy protein in foods that contain other sources of protein. For these latter foods, FDA must rely on information known only to the manufacturer to assess compliance with the qualifying amount of soy protein. Thus, FDA requires manufacturers to have and keep records to substantiate the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to

appropriate regulatory officials upon written request. The information collected includes nutrient databases or analyses, recipes or formulations, purchase orders for ingredients, or any other information that reasonably substantiates the ratio of soy protein to total protein.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency of Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 101.82(c)(2)(ii)(B) | 25 | 1 | 25 | 1 | 25 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based upon its experience with the use of health claims, FDA estimates that only about 25 firms would be likely to market products bearing a soy protein/CHD health claim and that only, perhaps, one of each firm's products might contain non-soy sources of protein along with soy protein. The records required to be retained by 21 CFR 101.82(c)(2)(ii)(B) are the records, e.g., the formulation or recipe, that a manufacturer has and maintains as a normal course of its doing business. Thus, the burden to the food manufacturer is that involved in assembling and providing the records to appropriate regulatory officials for review or copying.

Dated: July 15, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–18464 Filed 7–19–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0053]**

### Agency Information Collection Activities; Announcement of OMB Approval; State Petitions for Exemption From Preemption

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''State Petitions for Exemption From Preemption'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 30, 2002 (67 37838), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0277. The approval expires on July 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: July 15, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–18366 Filed 7–19–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0123]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by August 21, 2002.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers (OMB Control Number 0910–0037)—Extension

Under section 402 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342), FDA is authorized to prevent the interstate distribution of food products that may be injurious to health or that are otherwise adulterated. Under the authority granted to FDA by section 404 of the act (21 U.S.C. 344), FDA regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit FDA to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* must be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate

heat processes or other means of preservation.

To protect the public health, FDA's regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with FDA using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(2) (21 CFR 108.25(c)(1) and 108.35(c)(2))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms are also required to document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (thermally processed foods) and 114.80(b) (acidified foods)).

FDA estimates the burden of complying with the information collection provisions of the agency's regulations for acidified foods and thermally processed low-acid foods in hermetically sealed containers as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Form No. | 21 CFR Section | No. of Respondents | Annual Frequency of Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|---|
| FDA 2541 (registration) | 108.25 and 108.35 | 500 | 1 | 500 | .17 | 85 |
| FDA 2541a (process filing) | 108.25 and 108.35 | 1,000 | 7 | 7,000 | .333 | 2,331 |
| FDA 2541c (process filing) | 108.35 | 275 | 2 | 550 | .75 | 412 |
| Total | | | | 8,050 | | 2,828 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Part | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 108, 113, and 114 | 6,000 | 1 | 6,000 | 250 | 1,500,000 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is insignificant because notification of spoilage, process deviation or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. To avoid double-counting, estimates for §§ 108.25(g) and 108.35(h) have not been included because they merely cross-reference recordkeeping requirements contained in parts 113 and 114.

Dated: July 15, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–18319 Filed 7–19–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0012]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Postmarketing Adverse Drug Experience Reporting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES:** Submit written comments on the collection of information by August 21, 2002.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Postmarketing Adverse Drug Experience Reporting—21 CFR 310.305 and 314.80 (OMB Control Number 0910–0230)—Extension**

Sections 201, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 352, 355, and 371) require that marketed drugs be safe and effective. In order to know whether drugs that are not safe and effective are on the market, FDA must be promptly informed of adverse experiences occasioned by the use of marketed drugs. In order to help ensure this, FDA issued regulations (§§ 310.305 and 314.80 (21 CFR 310.305 and 314.80)) to impose reporting and recordkeeping requirements on the drug industry that would enable FDA to take action necessary for protection of the public health from adverse drug experiences.

All applicants who have received marketing approval of drug products are required to report to FDA serious, unexpected adverse drug experiences, as well as followup reports when needed (§ 314.80(c)(1)). This includes reports of all foreign or domestic adverse experiences as well as those obtained in scientific literature and from postmarketing epidemiological/surveillance studies. Under § 314.80(c)(2) applicants must provide periodic reports of adverse drug experiences. A periodic report includes, for the reporting interval, reports of serious, expected adverse drug experiences and all nonserious adverse drug experiences, a narrative summary and analysis of adverse drug experiences and a history of actions taken because of adverse drug experiences. Under § 314.80(i) applicants must keep for 10 years records of all adverse drug experience reports known to the applicant.

For marketed prescription drug products without approved new drug applications (NDAs) or abbreviated new drug applications, manufacturers, packers, and distributors are required to report to FDA serious, unexpected adverse drug experiences as well as followup reports when needed (§ 310.305(c)). Under § 310.305(f) each manufacturer, packer, and distributor shall maintain for 10 years records of all adverse drug experiences required to be reported.

The primary purpose of FDA's adverse drug experience reporting system is to provide a signal for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provides, for the first time, the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning) and when necessary, to initiate removal of a drug from the market.

In the **Federal Register** of February 25, 2002 (67 FR 8545), the agency requested comments on the proposed collection of information. FDA received two comments.

The comments asked what methodology and assumptions were used by FDA to calculate the burden estimates.

The ''hours per response'' were based on FDA's estimates of the time it would take manufacturers, packers, distributors, and applicants of marketed human drug products to submit the information to the agency.

The comments said that the annual number of responses of periodic reports is significantly underestimated. One comment estimated that companies submit more than 400 periodic reports (annual and quarterly reports) annually. The other comment estimated that it submits over 70 periodic reports annually.

FDA data indicates that it receives, on average, approximately 10,245 periodic reports (annual and quarterly reports) annually. A periodic report includes, as previously indicated, a narrative summary, individual case safety reports, and history of actions taken. Although some companies may submit 400 periodic reports annually, others only submit 1 periodic report annually.

The comments stated that the burden estimate seems to reflect only FDA's effort and not that of the respondents. The comments said that the hours per response for preparing periodic reports is grossly underestimated. One comment said that the preparation, quality control, and duplication of NDA periodic reports takes, on average, from 16 to 40 hours each, while the other comment said that this processing takes from 100 to 300 hours for each periodic report. The comments said that all adverse experience reports, including the non-15-day alert reports, need to be taken into account when calculating the burden, because all need to be reviewed, assessed, and processed for determination of ''expedited'' status and for inclusion in the periodic safety update reports. For example, the comments said that one company received approximately 49,000 initial adverse drug experience reports in association with their marketed prescription products from worldwide sources in 2001, approximately 4,800 of which qualified as 15-day alert reports; this included both initial and followup reports. Another company received approximately 20,000 initial adverse event reports from worldwide sources in 2001, approximately 2,000 of which qualified as 15-day alert reports; this included both initial and followup reports.

FDA notes that the estimate of 5 hours in the **Federal Register** of February 25, 2002, document was a typographical error. The correct estimate should be 28 hours. As explained in the information collection notice that published in the **Federal Register** of January 29, 1999 (64 FR 4665), this estimate is based on industry suggestions.

The comments questioned whether there are no capital, operating, or maintenance costs associated with maintaining records of adverse experience reports for 10 years. The comments said that companies must maintain facilities to store paper records in addition to backup records on other media. Costs for storage and retrieval vary widely, depending on the volume of records, rental fees, transportation costs, and retrieval fees, but may be substantial (i.e., thousands of dollars annually).

FDA agrees that there are maintenance costs associated with maintaining records of adverse experience reports for 10 years. FDA estimates that these costs are approximately $2,000 per company annually, as suggested by the comments.

The comments also provided several suggestions on how the regulations should be revised to enhance the reporting efficiency and to minimize the burden of the collection of information. For example, the comments said that FDA should revise the requirements to be consistent with the International Conference on Harmonization (ICH) guidelines for periodic safety update reports.

FDA is in the process of revising its safety reporting and recordkeeping regulations and will consider these comments in finalizing its rulemaking. Respondents will have an opportunity to comment further on these rulemaking initiatives. As stated in the **Federal Register** of May 13, 2002 (67 FR 33059), FDA is planning to publish a proposed rule that would amend the expedited and periodic safety reporting regulations

for human drugs and biologics to revise certain definitions and reporting formats as recommended by the ICH and to define new terms; to possibly add to or revise current reporting requirements; to consider revising certain reporting timeframes; and to suggest other revisions to these regulations to enhance the quality of safety reports received by FDA.

Respondents to this collection of information are manufacturers, packers, distributors, and applicants. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 310.305(c)(5) | 1 | 1 | 1 | 1 | 1 |
| 314.80(c)(1)(iii) | 5 | 1 | 5 | 1 | 5 |
| 314.80(c)(2) | 683 | 15 | 10,245 | 28 | 286,860 |
| Total | | | | | 286,866 |

[1]The reporting burden for §§ 310.305(c)(1), (c)(2), and (c)(3), and 314.80(c)(1)(i) and (c)(1)(ii) was reported under OMB control number 0910–0291. There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 310.305(f) | 25 | 1 | 25 | 1 | 25 |
| 314.80(i) | 683 | 1 | 683 | 1 | 683 |
| Total | | | | | 708 |

[1]There are no capital costs or operating costs associated with this collection of information. There are maintenance costs of $2,000 annually.

These estimates are based on FDA's knowledge of adverse drug experience reporting, including knowledge about the time needed to prepare the reports and the number of reports submitted to the agency.

Dated: July 15, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–18462 Filed 7–19–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02F–0316]**

### Intralytix, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Intralytix, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of bacteriophages as an antimicrobial agent on foods, including fresh meat, meat products, fresh poultry, and poultry products.

**FOR FURTHER INFORMATION CONTACT:** Raphael A. Davy, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3405.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2A4738) has been filed by Intralytix, Inc., c/o Lewis & Harrison, 122 C St. NW., suite 740, Washington, DC 20001. The petition proposes to amend the food additive regulations to provide for the safe use of a mixture of bacteriophages as an antimicrobial agent on foods, including fresh meat, meat products, fresh poultry, and poultry products.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 27, 2002.

**Alan M. Rulis,**

*Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.*

[FR Doc. 02–18465 Filed 7–19–02; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1891.

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

or other forms of information technology.

**Proposed Project: Maternal and Child Health Services Title V Block Grant Program—Guidance and Forms for the Title V Application/Annual Report (OMB No. 0915–0172)—Revision**

The Health Resources and Services Administration (HRSA) proposes to revise the *Maternal and Child Health Services Title V Block Grant Program—Guidance and Forms for the Application/Annual Report.* The guidance is used annually by the 50 States and 9 jurisdictions in making application for Block Grants under Title V of the Social Security Act and in preparing the required annual report. The proposed revisions follow and build on extensive consultation received from a Workgroup convened in 2002 to provide suggestions for improving the guidance and forms. The proposed revisions are editorial and technical revisions in nature and are based on the experience of the States and jurisdictions using previous versions of the guidance. Changes include consolidating the narrative to reduce redundancy, and reducing the number of Health Status Indicators (HSI) required in the application/annual report.

In addition, HRSA proposes changing the format for electronic submission to direct web entry. Web based data and text entry will provide for automatic calculation of ratios, rates, and percentages, carry data over year-to-year and assure that data used in multiple tables are entered only once. It will also facilitate the orderly printing of tables, text, and required appendices.

The guidance used annually by the 50 States and 9 jurisdictions had a previous estimated burden of 358 hours. Based on the new revisions and more efficient electronic submission, the estimated burden has been reduced by 5% to 322 hours. The estimated response burden is as follows:

| Type of form | Number of respondents | Responses per respondent | Burden hours per response | Total burden hours |
|---|---|---|---|---|
| Application and Annual Report, with needs assessment*: | | | | |
| States | 50 | 1 | 428 | 21,400 |
| Jurisdictions | 9 | 1 | 228 | 2,052 |
| Application and Annual Report, without needs assessment*: | | | | |
| States | 50 | 1 | 313 | 15,658 |
| Jurisdictions | 9 | 1 | 126 | 1,134 |

* The Application and Annual Report, with needs assessment, will be submitted in FY 2005. The Application and Annual Report, without needs assessment, will be submitted in FY 2003 and FY 2004. The average annual total burden hours for the next three years is 19,007. The average annual burden per respondent 322 hours.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of notice.

Dated: July 16, 2002.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 02–18323 Filed 7–19–02; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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

**Proposed Project: Traumatic Brain Injury (TBI) Grantee Survey—(NEW)**

The TBI program is designed to emphasize activities by States to ensure access to comprehensive and coordinated services for individuals with TBI and their families, including: Pre-hospital care; emergency department care; acute hospital care, rehabilitation; transitional services; education and employment; and long-term community support, on a statewide basis. The program provides grants to strengthen infrastructure, improve community supports and services, develop and evaluate model approaches to integrating TBI services into the broader service delivery system, and generate support from local and private sources for sustaining their efforts after the grant's completion.

HRSA is planning to conduct to conduct a survey to assess the degree to which States have implemented the core components of a TBI State Plan, which include: A designated State Health Agency and staff position, a Statewide Advisory Board, a Statewide needs assessment, and a Statewide Action Plan. The results of this assessment will be used to determine funding priorities, including development of appropriate guidelines and provision of technical assistance to States, demonstration grants, information collection and sharing among State agencies, and training programs for health professionals.

HRSA has included national performance measures for TBI in this survey in accordance with the requirements of the ''Government Performance and Results Act (GPRA) of 1993'' (Public Law 103–62). This act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance.

The estimated response burden is as follows:

| Type of form | Number of respondents | Responses per respondent | Burden hours per response | Total burden hours |
|---|---|---|---|---|
| Self assessment questionnaire | 56 | 1 | 10 | 560 |

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 16, 2002.

**Jane M. Harrison,**

*Director, , Division of Policy Review and Coordination.*

[FR Doc. 02–18324 Filed 7–19–02; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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

**Proposed Project: Emergency Medical Services for Children (EMSC) Grantee Survey—(NEW)**

Because of the differences in the way emergency medical services are managed and provided in different States and the challenges faced delivering services in different parts of the country, there are many unanswered questions about the overall capability of these systems to respond to emergencies. In order to improve the quality of EMSC, more information is needed to identify State needs and resources.

HRSA is therefore planning to conduct a needs assessment to obtain information about the characteristics of State EMS systems, and the degree to which they have been adapted to address the needs of children. The results of this assessment will be used to determine funding priorities, including development of appropriate guidelines and provision of technical assistance to States, demonstration grants, information collection and sharing among State agencies, and training programs for health professionals.

HRSA has included national performance measures for EMSC in this survey in accordance with the requirements of the ''Government Performance and Results Act (GPRA) of 1993'' (Public Law 103–62). This act requires the establishment of measurable goals for Federal programs that can be reported as part of the budgetary process, thus linking funding decisions with performance.

The estimated response burden is as follows:

| Type of form | Number of respondents | Responses per respondent | Burden hours per response | Total burden hours |
|---|---|---|---|---|
| Self Assessment questionnaire | 56 | 1 | 10 | 560 |

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 16, 2002.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 02–18325 Filed 7–19–02; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Project: Drug Abuse Warning Network (OMB number 0930–0074, revision)*—The Drug Abuse Warning Network (DAWN) is an on-going data system that currently collects information on drug abuse-related medical emergencies and deaths as reported from about 466 hospitals and 137 medical examiners/coroners (ME/C) nationwide. DAWN provides national and metropolitan estimates of substances involved with drug-related ED visits; disseminates information about substances involved in deaths investigated by participating ME/Cs; provides a means for monitoring drug abuse patterns, trends, and the emergence of new substances; assesses health hazards associated with drug use; and generates information for national and local drug abuse policy and program planning. DAWN data are used by Federal, State, and local agencies, as well as universities, pharmaceutical companies, and the press.

The current emergency department (ED) sample supports estimates for the coterminous U.S. and 21 major metropolitan areas. Beginning in 2003, the DAWN case definition will be changed to obtain more consistent and reliable data on drug abuse cases and also will capture additional cases where drug use/misuse led to ED visits or deaths for conditions such as adverse drug reactions, underage drinking and malicious poisonings. To achieve better geographic and population coverage, the ED sample will be expanded to support estimates for the full U.S. and 48 metropolitan areas. By the end of 2005, the sample will include approximately 841 hospitals. To achieve complete coverage, approximately 66 non-participating ME/C jurisdictions in the 48 metropolitan areas targeted for the ED expansion will be added in lieu of a sample. Facilities (EDs and ME/Cs) will continue to use the current forms in early 2003 to complete reporting on events occurring through December 2002, but will use the revised forms for all events occurring from 1/1/2003 forward.

The annual burden estimates are shown below.

ANNUALIZED REPORTING BURDEN FOR DAWN: CLOSEOUT 2002 [1]

| | Number of respondents | Estimated number of responses per respondent | Estimated time per response | Gross burden hours | IR [2] Reporting Hours | Total adjusted burden (hrs) |
|---|---|---|---|---|---|---|
| **Hospitals** | | | | | | |
| Current Forms | 100 | 58 | 9 min (.15 hr) | 870 | 435 | 435 |
| Current eHERS (electronic Hospital Emergency Reporting System). | 366 | 58 | 9 min (.15 hr) | 3184 | 1592 | 1592 |
| ED Logs | 100 | 7 | 2 min (.03 hr) | 21 | 11 | 10 |
| Subtotal | | | | | | 2037 |
| **Medical Examiners** | | | | | | |
| Current Forms | 20 | 16 | 15 min (.25 hr) | 80 | 40 | 40 |
| Current eMERS (electronic Medical Examiner Reporting System). | 119 | 16 | 15 min (.25 hr) | 476 | 238 | 238 |
| ME Logs | 20 | 9 | 2 min (.03 hr) | 5 | 3 | 2 |
| Subtotal | | | | | | 280 |
| Total | | | | | | 2317 |

[1] Number of respondents and respondent burden annualized over 3 year period from 12/1/02–11/30/05, using the current reporting forms.

[2] There is no burden associated with reporting by Independent Reporters (IRs), so these hours are not included in Total Adjusted Burden. Half (50%) of all respondents are Independent Reporters.

ANNUALIZED REPORTING BURDEN FOR DAWN [1]: 2003–2005

| | Number of respondents | Estimated Number of responses per respondent | Estimated time per response | Gross burden hours | IR [2] Reporting hours | Total adjusted burden (hrs) |
|---|---|---|---|---|---|---|
| **Hospitals** | | | | | | |
| Case Forms | 100 | 97 | 12 min (.20 hr) | 1940 | 970 | 970 |
| Transmittal Forms | 100 | 11 | 2 min (.03 hr) | 33 | 17 | 16 |

ANNUALIZED REPORTING BURDEN FOR DAWN [1]: 2003–2005—Continued

| | Number of respondents | Estimated Number of responses per respondent | Estimated time per response | Gross burden hours | IR [2] Reporting hours | Total adjusted burden (hrs) |
|---|---|---|---|---|---|---|
| Revised eHERS (electronic Hospital Emergency Reporting System). | 654 | 678 | 12 min (.20 hr) | 88,682 | 44,341 | 44,341 |
| Subtotal | | | | | | 45,327 |
| **Medical Examiners** | | | | | | |
| Case Forms | 20 | 20 | 15 min (.25 hr) | 100 | 50 | 50 |
| Transmittal Forms | 20 | 11 | 2 min (.03 hr) | 7 | 4 | 3 |
| Revised eMERS (electronic Medical Examiner Reporting System). | 175 | 117 | 15 min (.25 hr) | 5119 | 2560 | 2559 |
| Subtotal | | | | | | 2612 |
| Total | | | | | | 47,939 |

[1] Number of respondents and respondent burden annualized over 3 year period from 12/1/02–11/30/05 using the revised reporting forms. Assumes all facilities converted to electronic reporting by July 2003.

[2] There is no burden associated with reporting by Independent Reporters (IRs), so these hours are not included in Total Adjusted Burden. Half (50%) of all respondents are Independent Reporters.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 16, 2002.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 02–18357 Filed 7–19–02; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### The President's New Freedom Commission on Mental Health; Notice of Meeting

Pursuant to Executive Order 13263, notice is hereby given of a meeting of the President's New Freedom Commission on Mental Health in August 2002.

The meeting will be open and will consider how to accomplish the Commission's mandate to conduct a comprehensive study of the United States mental health service delivery system and to make recommendations on improving the delivery of public and private mental health services for adults and children. Among other things, it will hear presentations from experts in several issue areas, define issue priorities in greater detail and develop an outline for the interim report.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Additional information and a roster of Commission members may be obtained from the contact whose name and telephone number is listed below.

*Committee Name:* The President's New Freedom Commission on Mental Health.

*Meeting Date/Time:* Open: August 7, 2002, 3:30 p.m. to 6:30 p.m.

*Open:* August 8, 2002, 8:30 a.m. to 3:30 p.m.

*Place:* Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

*Contact:* Claire Heffernan, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 13C–26,Rockville, MD 20857.

Telephone: (301) 443–1545; Fax: (301) 480–1554 and e-mail: *Cheffern@samhsa.gov.*

Dated: July 17, 2002.

**Toian Vaughn,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 02–18461 Filed 7–19–02; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Tribal Consultation on ''No Child Left Behind Act''

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of tribal consultation meetings.

**SUMMARY:** The Department of the Interior gives notice that the Bureau of Indian Affairs (BIA) will conduct regional consultation meetings to obtain oral and written comments prior to establishing a Negotiated Rulemaking Committee under the No Child Left Behind Act of 2001 for negotiation of proposed regulations under the Act. Tribal officials, parents, teachers, administrators, educators at Bureau schools, and school board members of tribes served by Bureau-funded schools are encouraged to attend the meetings and submit written comments.

**DATES:** The meeting dates are August 9, 2002 through September 9, 2002, for all locations listed. All meetings will begin at 9 a.m. and end at 6 p.m. (local time) or when all meeting participants have the opportunity to make comments. Comments are due on or before September 15, 2002.

**ADDRESSES:** Send or hand-deliver written comments to William Mehojah, Jr., Director, Office of Indian Education Programs, Bureau of Indian Affairs, MS

3512–MIB, 1849 C St., NW., Washington, DC 20240. Send facsimile submissions to (202) 273–0030.

**FOR FURTHER INFORMATION CONTACT:** Dalton Henry, Office of Indian Education Programs, Bureau of Indian Affairs, MS 3512–MIB, 1849 C St., NW., Washington, DC 20240. Telephone: (202) 208–5820.

**SUPPLEMENTARY INFORMATION:** The No Child Left Behind Act of 2001, Public Law 107–110, authorizes the Department to promulgate several regulations using negotiated rulemaking. The purpose of the regional consultation meetings is to allow tribal officials, parents, teachers, administrators, educators at Bureau schools, and school board members of tribes served by Bureau-funded schools to provide guidance to the Secretary on the content of the regulations. As part of providing guidance to the Secretary, the meetings are intended to identify interests and define issues for recommendations for negotiated rulemaking under the Act and under the Negotiated Rulemaking Act and the Federal Advisory Committee Act.

This consultation will cover six sections of the Act that provide for negotiated rulemaking regarding Bureau-funded schools. The Committee will develop recommendations for proposed regulations that will:

(1) *Under Section 1124*—establish separate geographic attendance areas for each Bureau-funded school;

(2) *Under Section 1127*—establish a formula for determining the minimum annual amount of funds necessary to fund each Bureau-funded school;

(3) *Under Section 1130*—establish a system for the direct funding and support of all Bureau-funded schools under the formula established under Section 1127;

(4) *Under Section 1136*—establish guidelines to ensure the constitutional and civil rights of Indian students regarding the right to privacy, freedom of religion and expression, and due process in connection with disciplinary actions (suspension and expulsion);

(5) *Under Section 1043*—establish a method for the administration of grants under the Tribally Controlled Schools Act of 1988, as amended by Section 1043; and

(6) *Under Section 1116(g)*—define ''Adequate Yearly Progress'' which is the essential measurement for determining that schools are providing quality education.

A third-party neutral facilitator will facilitate each consultation meeting. Interpreters will be available, as needed.

The results of this consultation will provide guidance to the negotiated rulemaking committee. The Committee, in its advisory capacity, will develop recommendations for the Secretary for proposed regulations to be published by June 2003.

MEETING SCHEDULE

| Dates | Location | Local contact | Phone No. |
|---|---|---|---|
| August 9, 2002 | Tuba City, AZ | Mike Luther | (928) 283–2218 |
| August 12, 2002 | Shiprock, NM | Lester Hudson | (505) 368–3400 |
| August 13, 2002 | Chinle, AZ | Beverly Crawford | (928) 674–5131 |
| August 14, 2002 | Window Rock, AZ | Winnifred Peters | (928) 729–7251 |
| August 15, 2002 | Ft. Wingate, NM | Bea Woodward | (505) 786–6150 |
| August 16, 2002 | Albuquerque, NM | Ben Atencio | (505) 346–2431 |
| August 19, 2002 | Bismarck, ND | Loretta Delong | (701) 477–3463 |
| August 21, 2002 | Minneapolis, MN | Terry Portra | (612) 713–4400 |
| August 23, 2002 | Pierre, SD | Norma Tibbitts | (605) 867–1306 |
| | | Cherie Farlee | (605) 964–8722 |
| August 26, 2002 | Philadelphia, MS | LaVonna Weller | (202) 208–7952 |
| August 28, 2002 | Phoenix, AZ | Joe Frazier | (520) 361–3510 |
| August 30, 2002 | Portland, OR | John Reimer | (503) 872–2743 |
| September 5, 2002 | Oklahoma City, OK | Joy Martin | (405) 605–6051 |
| September 9, 2002 | Washington, DC | Ed Parisien | (505) 248–6955 |
| | | Rod Young | (202) 208–6175 |

Comments, including names, street addresses, and other contact information from commenters, will be available for public review at the address listed under the **ADDRESSES** section during regular business hours (7:45 a.m. to 4:15 p.m. EDT), Monday through Friday, except Federal holidays. If you do not want your name or address or other information available to the public, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Dated: July 16, 2002.

**Neal A. McCaleb,**

*Assistant Secretary-Indian Affairs.*

[FR Doc. 02–18460 Filed 7–19–02; 8:45 am]

**BILLING CODE 4310–6W–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0059 and 1029–0090

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority for two collections of information: OSM grant forms—OSM–47 (Budget Information Report) OSM–49 (Budget Information and Financial Reporting), and OSM–51 (Performance and Program narrative); and 30 CFR part 870, Abandoned mine reclamation fund—fee collection and coal production reporting.

**DATES:** Comments on the proposed information collection must be received by September 20, 2002, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240. Comments

may also be submitted electronically to *jtreleas@osmre.gov*.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in OSM grant forms—OSM–47 (Budget Information Report), OSM–49 (Budget Information and Financial Reporting) and OSM–51 (Performance and Program narrative); and 30 CFR part 870, Abandoned mine reclamation fund—fee collection and coal production reporting. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

*Title:* Budget information, financial reporting, and performance reporting forms.

*OMB Control Number:* 1029–0059.

*Summary:* State and Tribal reclamation and regulatory authorities are requested to provide specific budget and program information as part of the grant application and reporting processes authorized by the Surface Mining Control and Reclamation Act.

*Bureau Form Numbers:* OSM–47, OSM–49 and OSM–51.

*Frequency of Collection:* Semi-annually and annually.

*Description of Respondents:* State and Tribal regulatory and reclamation authorities.

*Total Annual Responses:* 131.

*Total Annual Burden Hours:* 655 hours.

*Title:* 30 CFR part 870—Abandoned mine reclamation fund—fee collection and coal production reporting.

*OMB Control Number:* 1029–0090.

*Summary:* Section 402 of SMCRA requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection request is needed to support verification of the moisture deduction allowance. The information will be used by OSM during audits to verify that the amount of excess moisture taken by the operator is appropriate.

*Frequency of Collection:* Quarterly.

*Description of Respondents:* Coal mine operators.

*Total Annual Responses:* 933.

*Total Annual Burden Hours:* 700.

Dated: June 19, 2002.

**Richard G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 02–18458 Filed 7–19–02; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001

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

**ACTION:** Request for Comments on Proposed Guidelines.

**SUMMARY:** A notice published by the Office of Management and Budget (OMB) in the **Federal Register** directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. We, the Office of Surface Mining Reclamation and Enforcement (OSM), are issuing these proposed Information Quality Guidelines in order to comply with the OMB requirement.

**DATES:** To ensure consideration of any comments you may have on the proposed guidelines, your comments must be received on or before August 21, 2002.

**ADDRESSES:** You may mail or hand carry comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC 20240. You may also e-mail comments to *osmrules@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Donald Griffith, Deputy Chief Information Officer, Office of Surface Mining Reclamation and Enforcement, on 202–208–2916, or via e-mail at *DGriffit@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

A notice published by OMB in the **Federal Register**, dated January 3, 2002 (67 FR 369), and reissued February 22, 2002 (67 FR 8451), directed Federal agencies to issue and implement guidelines to ensure and maximize the quality, objectivity, utility, and integrity of Government information disseminated to the public. On May 24, 2002, the Department of the Interior published a **Federal Register** notice providing the web site where Departmental Information Quality Guidelines may be reviewed, and directing its offices and bureaus to publish by July 1, 2002, a notice of availability of their own Guidelines in the **Federal Register** for public comment. We are issuing these proposed Information Quality Guidelines in order to comply with this direction.

OSM, which includes Headquarters, three Regional Offices, and ten Field Offices, disseminates a wide variety of information to the public regarding the nation's surface coal mining and reclamation activities on Federal, tribal or other lands within states which may include state or privately-owned lands. The disseminated information includes organizational and management information, programs and services products, research and statistical reports, policy and regulatory information, and general reference material. We will evaluate and identify the types of information that we disseminate that will be subject to these guidelines, once finalized.

#### II. Information Quality Standards

To the greatest extent practicable and appropriate, information we disseminate is internally reviewed for quality—including objectivity, utility, and integrity—before such information is disseminated.

1. Information we disseminate to the public is normally subject to one or more levels of internal staff, or supervisory review for quality before we disseminate the information.

2. The number of levels of internal quality review applied in a particular case depends on the nature, scope, and purpose of the information to be disseminated. For example, routine reports that may be prepared by staff about the agency's activities or operations may be subject to one or two levels of staff or supervisory review for

basic accuracy and completeness before such reports are released to the general public. Additional levels of internal review, supplementation, clarification, or approval by our management may be appropriate, however, to the extent such a report may be intended as the basis for more complicated budgeting decisions or legislative reporting purposes (e.g., to satisfy a need for greater statistical detail or explanation).

We have adopted the information quality definitions published by OMB. They are set forth in IV. below.

**III. Information Quality Procedures**

While we may vary in our implementation approaches, the basic guidance published by OMB on January 3, 2002, re-issued February 22, 2002, and adopted by the Department in the **Federal Register,** dated May 24, 2002, is included in our policy and will apply to our dissemination of information.

The OMB guidelines mandate that, after October 2, 2002, affected persons may seek and obtain, where appropriate, correction of disseminated information that does not comply with the OMB or Department guidelines. As a responsible bureau, we will by that date provide procedures to review and correct disseminated information and will establish a system for tracking and responding to complaints in accordance with this direction. As a part of this process, we will provide on our Web site (*http://www.osmre.gov*) a means for affected persons to challenge the quality of disseminated information. We will also provide addresses of appropriate officials to contact through the mail to challenge the quality of disseminated information.

If you want to challenge the quality of our disseminated information, please provide the following information: the name and address of the person filing the complaint; specific reference to the information being challenged; a statement of why the complainant believes the information fails to satisfy the standards in the OSM or OMB guidelines; and how the complainant is affected by the challenged information. The complainant may include suggestions for correcting the challenged information, but that is not mandatory.

Once we receive a complaint, we will have 5 business days to notify the complainant of receipt. We will also notify the program area that disseminated the challenged information of the receipt of the complaint. We will have 45 business days from receipt to evaluate whether the complaint is accurate based on an analysis of all information available to the appropriate program or office. If, within the 45 business-day period, we determine that the complaint is without merit, we will notify the complainant. If, within the 45 business-day period, we determine that the complaint has merit, we will notify the complainant and the appropriate program or office. We will take reasonable steps to withdraw the information from the public domain and from any decision-making process in which it is being used. If we decide to correct the challenged information, we will notify the complainant of our intent and make the correction. We will determine the schedule and procedure for correcting challenged information, but will not disseminate the challenged information in any form until we make the appropriate corrections. We will provide the complainant with a copy of the corrected information once completed.

If a complainant does not receive the notices within the time frame described above, or wishes to appeal a determination of merit, or wishes to appeal the proposed correction of information, the complainant may appeal to our Chief Information Officer (CIO). The CIO may intervene on behalf of the complainant to maintain the complaint-resolution process. If the CIO determines that an appeal of a determination of merit or the proposed correction of information has merit, our appropriate program office will be notified. We will withdraw the challenged information from the public domain, to the extent practicable, and will not use the information in any of our decision-making process until we correct it.

If we receive a second complaint before we issue the 45 business-day notice for an overlapping complaint under review, we will treat it with simultaneous consideration. We will notify the second complainant within 5 business days that an analysis is in progress and will provide its status. We will combine the earlier and later complaints and issue a combined 45 business-day notice.

If we receive the second complaint on the same subject after we have issued a 45 business-day notice, we will conduct a new and separate review.

We conduct a substantial amount of business following the public review and comment on proposed documents prior to their issuance in final form. These activities include rulemakings and analyses conducted under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the National Environmental Policy Act (NEPA) and other authorities. For the purposes of the Information Quality Guidelines covered by this notice, we will treat requests we receive for corrections of information in draft documents as comments on the draft documents. Response to comments will be included in the final document. When we receive requests for corrections of information in a final document, we will first determine whether the request pertains to an issue discussed in the draft document upon which the requester could have commented. If we determine that the requester had the opportunity to comment on the issue at the draft stage and failed to do so, we may consider the request to have no merit. If information that did not appear in the draft document is the subject of a request for correction, we will consider that request. If we determine that the information does not comply with OMB or our guidelines, such that the non-compliance with the guidelines presents significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, OSM will use existing mechanisms to remedy the situation, such as reproposing a rule or supplementing published analysis.

We will submit a report for each fiscal year to the Department of the Interior's Office of the Chief Information Officer (OCIO) not later than November 30 of each year. The report will identify the number, nature, and resolution of complaints received. the OCIO staff will consolidate all bureau reports into a Departmental annual report and submit to the Director of OMB no later than January 1, annually.

**IV. Definitions**

1. *Quality* is an encompassing term that includes utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four statutory terms collectively as quality.

2. *Utility* refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that we disseminate to the public, we need to reconsider the uses of the information not only from our perspective, but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, we will take care to address that transparency in our review of the information.

3. *Objectivity* involves two distinct elements: presentations and substance.

(a) *Objectivity* includes whether we disseminate information in an accurate, clear, complete, and unbiased manner.

This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, we will identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and include it in a specific financial, or statistical context so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, we will identify transparent documentation and error sources affecting data quality.

(b) In addition, objectivity involves a focus on ensuring accurate, reliable, and unbiased information. In a scientific financial, or statistical context, we will analyze the original and supporting data and develop our results using sound statistical and research methods.

(1) If data and analytic results have been subjected to formal, independent, external peer review, we will generally presume that the information is of acceptable objectivity. However, a complainant may rebut this presumption based on a persuasive showing in a particular instance. If we use peer review to help satisfy the objectivity standard, the review process employed shall meet the general criteria for competent and credible peer review recommended by OMB's Office of Information and Regulatory Affairs (OIRA) to the President's Management Council (9/20/01) (*http://www.whitehouse.gov/omb/inforeg/oira_review-process.html*). OIRA recommends ''that (a) peer reviewers be selected primarily on the basis of necessary technical expertise, (b) peer reviewers be expected to disclose to agencies prior technical/policy positions they may have taken on the issues at hand, (c) peer reviewers be expected to disclose to agencies their sources of personal and institutional funding (private or public sector), and (d) peer reviews be conducted in an open and rigorous manner.''

(2) Since we are responsible for disseminating influential scientific, financial, and statistical information, we will include a high degree of transparency about data and methods to facilitate the reproducibility (the ability to reproduce the results) of such information by qualified third parties.

With regard to original and supporting related data, we will not require that all disseminated data be subjected to a reproducibility requirement. We may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practically be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (i.e. a new experiment, test of sample) that will not be required prior to each release of information.

With regard to analytical results, we will generally require sufficient transparency about data and methods that a qualified member of the public could undertake an independent reanalysis. These transparency standards apply to our analysis of data from a single study as well as to analyses that combine information from multiple studies.

Making the data and methods publicly available will assist us in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.

In situations where public access to data and methods will not occur due to other compelling interests, we will apply especially rigorous checks to analytical results and documents what checks were undertaken. We will, however, disclose the specific data sources used, and the specific quantitative methods and assumptions we employed. We will define type of checks, and the level of detail for documentation, given the nature and complexity of the issues.

Since we are responsible for dissemination of some types of health and public safety information, we will interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from us to appropriate government agencies and the public. We may temporarily waive information from us to appropriate government agencies and the public. We may temporarily waive information quality standards under urgent situations (e.g., imminent threats to public health or homeland security) in accordance with the latitude that may be specified in the Department guidelines.

4. *Integrity* refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. *Information* means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where our presentation makes it clear that what is being offered is someone's opinion rather than fact or our views.

6. *Government information* means information created, collected, processed, disseminated, or disposed of by or for the Federal Government.

7. *Information dissemination product* means any books, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, an agency disseminates to the public. This definition includes any electronic document, CD–ROM, or web page.

8. *Dissemination* means agency initiated or sponsored distribution of information to the public [*see* 5 CFR 1320.3(d) for definition of ''conduct or sponsor'']. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law. This definition also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.

9. *Influential,* when used in the phrase ''influential scientific, financial, or statistical information,'' means that we can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions. We are authorized to define ''influential'' in ways appropriate for us, given the nature and multiplicity of issues for which we are responsible.

10. *Reproducible* means that the information is capable of being substantially reproduced, subject to an acceptable degree of impression. For information judged to have more (less) important impacts, the degree of imprecision that is tolerated is reduced (increased). If we apply the reproducibility test to specific types of original or supporting data, the associated guidelines will provide relevant definitions of reproducibility

(*e.g.,* standards for replication of laboratory data). With respect to analytic results, capable of being substantially reproduced means that independent analysis of the original or supporting data using identical methods would demonstrate whether similar analytic results, subject to an acceptable degree of imprecision or error, could be generated.

**V. Legal Effect**

These guidelines are intended only to improve the internal management of the Office of Surface Mining Reclamation and Enforcement relating to information quality. Nothing in these guidelines is intended to create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its offices, or any other person.

Dated: June 25, 2002.

**Jeffrey D. Jarrett,**

*Director.*

[FR Doc. 02–18459 Filed 7–19–02; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF LABOR

### Office of Disability Employment Policy; High School/High Tech State Grants

**AGENCY:** Office of Disability Employment Policy, Labor.

**ACTION:** Notice of Availability of Funds and Solicitation for Grant Applications of High School/High Tech State Grants (SGA 02–14).

**SUMMARY:** The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP) announces the availability of $500,000 to award two to five competitive grants in the amount of $100,000 to $250,000 each to further expand the integration of the High School/ High Tech (HS/HT) program into the One-Stop Center System established under the Workforce Investment Act of 1998 (WIA) (Public Law 105–220, 29 U.S.C. 2801 *et seq.*). State Workforce Investment Boards; State Departments of Education; State Departments of Labor; State Developmental Disability Councils; State Departments of Vocational Rehabilitation; State Committees affiliated with the National Governors' Committees for People with Disabilities; and Workforce Investment representatives from the District Columbia, Puerto Rico, and other United States Territories and Commonwealths, and other similar state agencies are eligible applicants for these grants. Grants will be awarded for a 24-month period of performance. After two years of support, it is anticipated that the grantees will have identified and developed the funds and resources needed to continue the expansion of High School/High Tech programs within their states.

The purpose of these grants is to assist states in developing statewide High School/High Tech infrastructure and operations and integrating the HS/HT programs into the youth services provided through the One-Stop Center System. HS/HT is a series of nationally established programs designed to provide young people with disabilities with an opportunity to explore careers or further education leading to technology-related careers. These programs, which have generally been locally directed and supported, serve both in-school or out-of-school youth with all disabilities in a year round program of corporate site visits, mentoring, job shadowing, guest speakers, after school activities and summer internships. These grants are intended to assist states in planning and implementing a statewide HS/HT network working in partnership with the State Workforce Investment Board.

**DATES:** The closing date for receipt of applications under this announcement is August 21, 2002. Submit one ink-signed original, complete grant application plus two copies of the Technical Proposal and two copies of the Cost Proposal to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 02–14, Room N–5416, 200 Constitution Avenue, NW., Washington, DC, 20210, not later than 4:45 p.m. Eastern Daylight Savings Time (EDST), August 21, 2002. Hand-delivered applications must be received by the Procurement Services Center by that time.

**ADDRESSES:** Grant applications must be directed to the U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 02–14, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** This SGA offers complete guidance on how to submit a proposal. Questions concerning this solicitation may be directed to Cassandra Willis, at phone (202) 693–4570 (this is not a toll-free number). Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

*Late Proposals:* All applicants are advised that U.S. mail delivery in the Washington, DC, area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application(s) by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, at 202/693–4570, prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

*Acceptable Methods of Submission:* The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services Center after 4:45 p.m., EDST, August 21, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 21, 2002; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days, excluding weekends and Federal holidays, prior to August 21, 2002; and/or

3. 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.

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 shall 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 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 Procurement Services Center 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 Department does not accept dates or date stamps on such packages as evidence of timely mailing. Thus, the

applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC, area has been erratic due to concerns involving anthrax contamination. All applicants 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 Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Authority

Consolidated Appropriations Act, 2001, Pub. L. 106–554, 114 Stat. 2763; 29 U.S.C. 557b; DOL, HHS, Education and Related Appropriations Act, 2002, Pub. L. 107–116, 115 Stat. 2177.

## II. Background

According to the U.S. Department of Education, the national high school graduation rates (*e.g.,* diplomas, GED, alternative certificates) for students with disabilities are below that of youth without disabilities. According to the National Center on Education Statistics (2001), 88% of students without disabilities graduate; according to the Office of Special Education Programs (2000) 62% of youth with disabilities graduate. Students with disabilities experience a school drop out rate of 31%, compared to 11% of non-disabled youth. Youth with emotional disabilities experience an even higher drop out rate of 54%. Further, it is estimated that only one-third of young people with disabilities who need job training receive it. Young people with disabilities also have significantly lower rates of participation in post-secondary education. Finally, the Social Security Administration has found that many young people with disabilities who enter the Supplementary Security Income (SSI)/Social Security Disability Insurance (SSDI) rolls are likely to remain on the program rolls for their entire lives.

The Federal/State vocational rehabilitation system is neither large enough to serve, nor solely responsible for serving all youth with disabilities that depart the school system. According to the U.S. Department of Education, each year approximately 500,000 young people with disabilities leave our nation's schools. Vocational rehabilitation programs are able to serve less than 40,000 of these young people with disabilities. A large portion of the remaining 460,000 youth with disabilities is potentially eligible for youth programs financially assisted under WIA.

The current expectations of public education and workforce development systems, along with employers, parents and young people with disabilities often fail to recognize the potential that young people with disabilities have for jobs and careers, particularly in technology-related occupations. As a result, youths with disabilities are seldom afforded post-secondary preparation and educational opportunities leading to internships and placements in technology-related careers. This is a tragic loss of potential. People with disabilities have demonstrated that they can be successful in technology-based occupations and these positions represent an increasing segment of the workforce.

The U.S. Department of Labor has determined that youth programs need to be strengthened to better serve young people with disabilities. Among ODEP's responsibilities is to provide technical assistance and support designed to assist various youth programs, including WIA-assisted youth programs, and thereby increase the capacity of those programs to serve people with disabilities. These activities will substantially contribute to achieving the goals of the President's New Freedom Initiative particularly as it relates to increasing the ability of Americans with disabilities to integrate into the workforce.

A key to increasing the employment of people with disabilities is to ensure that young people with disabilities are provided resources and assistance to move from school to work, as opposed to becoming dependent on welfare or other benefits programs. One way of accomplishing this is to increase the participation of youth with disabilities in transition programs like the Workforce Investment Act (WIA) youth programs and High School/High Tech (HS/HT). The WIA youth-focused programs and activities hold tremendous potential to support career development activities for young people with disabilities.

WIA youth service providers, however, may not be aware of the need to serve youth with disabilities in their communities and may lack the resources to develop strong partnerships and an equitable referral and assessment system. In addition, Vocational Rehabilitation agencies, Special Education agencies, and other agencies serving youth with disabilities may not be informed about the potential for coordinating resources with WIA-based programs, or for creating mechanisms for such programs to cooperate and support young people with disabilities. HS/HT, an existing program that has proven effective in attracting high school aged youth with disabilities to technology careers, can help bridge this gap.

HS/HT programs currently operate in 75 communities, across the nation. As HS/HT is a community-based partnership, different entities run the local HS/HT operations across the country. Current HS/HT operators include non-profits (Goodwill, Centers for Independent Living, United Cerebral Palsy Affiliates, and others), community colleges, universities and school districts. Funding for the sites is managed locally. Therefore, funding comes from a variety of local, state, and national resources. In order for HS/HT to continue to flourish, state level organization and coordination are needed.

The HS/HT program works within community and state systems to help coordinate the delivery of education and transition services to students with disabilities. Its stakeholders include employers, educators, consumers, family members, workforce system agencies, and rehabilitation professionals. The HS/HT program offers states proven techniques for developing improved employment outcomes for young people with disabilities.

HS/HT graduates demonstrate at least a doubling of post-secondary education achievements. At some HS/HT sites, as many as 70% of HS/HT graduates move on to post-secondary education. HS/HT clearly enhances expectations, educational achievements and eventual employment outcomes for a population who, without this intervention, is far more likely to move onto the Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) rolls than to find competitive employment in technology related occupations.

Last year ODEP funded start-up HS/HT sites that began connecting HS/HT and WIA youth programs at the community level and the funds awarded under the current SGA are intended to expand upon that effort. The goals of HS/HT match the Workforce Investment Act's youth programming themes of employment preparation, educational achievement, support, and leadership. The HS/HT model includes eight of the ten programming elements required for youth programs funded by WIA: (1) Summer employment opportunities; (2)

work experiences; (3) occupational skills training; (4) tutoring; (5) supportive services; (6) adult mentoring; (7) comprehensive guidance; and (8) leadership development. *See* section 129(c)(2) of the WIA, codified at 29 U.S.C. 2854(c)(2). By linking HS/HT and WIA and additional resources at a state level, students with disabilities will have an increased opportunity to participate in meaningful school-to-career initiatives.

**III. Purpose**

High School/High Tech sites have traditionally worked with community systems to coordinate the delivery of educational and transitional services to youths with disabilities. The purpose of this SGA is to bring HS/HT to the state level. This will allow the resources within a state to be maximized and coordinated for the benefit of all HS/HT sites in a state. HS/HT state directors will work with key stakeholders (workforce investment systems, colleges, developmental disability councils, governors' committees on the employment of people with disabilities, employers, educators, rehabilitation professionals, consumers, and parents) to institutionalize the program within the state.

As a community-based, work-based, and school-based program, HS/HT is designed to provide opportunities for students with disabilities to explore careers in technology-related occupations. HS/HT students across the nation learn first-hand what it is like to work in high tech environments. Preparatory experiences (career information and assessment, computer training, visiting colleges, and guest speakers), work-based experiences (internships, site visits, mentoring, and job shadowing), leadership development (mentoring, self-advocacy training, and community service), and connecting activities (assistive technology, tutoring, and transportation) all provide students with the opportunities to learn more about careers in science, engineering and technology-related fields.

To learn about the structure and operations of the High School/High Tech Program, consult the High School/High Tech Program Guide at *http://www2.dol.gov/odep/media/reports/hsht00/toc.htm.*

**IV. Statement of Work**

These grant funds are not intended as direct service payments for youth with disabilities. Rather, these funds are intended to be used in ways which create the adoption (systems change) of a statewide HS/HT initiative and which involve the development or demonstration of promising new strategies with potential replicability that build upon existing HS/HT strategies.

This system will better serve youth with disabilities as they transition from high school to post-secondary education or the work world.

The Project Narrative of the grant application must provide complete information that will address the requirements of this SGA, including the following:

*A. Leadership*

The application must discuss how the applicant will establish leadership from, or a working relationship with, a State Workforce Investment Board, State Department of Labor, State Department of Education, State Vocational Rehabilitation, WIA youth-related entity, or other community partners (*e.g.,* area disability organizations, state committees on employment of people with disabilities, centers for independent living, interested employers) in the establishment and operation of a state level HS/HT program. At least three categories of the above listed organizations must be represented in and be a part of the state-level leadership team, with the State Workforce Investment Board as a mandatory partner. Describe any actions already taken by the applicant to address the need for a statewide HS/HT leader.

*B. Strategic Plan for the State*

The application must address the proposed design for a state-based HS/HT infrastructure. The plan should include: the partners' (as listed in paragraph A) roles within the state's HS/HT operations; how the partners will integrate resources to advance the HS/HT model; the plan for long term funding for the initiative; plans for developing or increasing the number of sites; and possible policy implications and changes resulting from an improved delivery system for all high school-aged youth with disabilities transitioning to post-secondary education or the world of work.

*C. High School/High Tech Sites*

The application must include a strategy to replicate HS/HT programs throughout the state. In the first year of the grant the state director will establish, at a minimum, one new site. In the second year of the grant the state director will establish at least two additional sites. Applications must identify tentative locations for such sites and likely partners at the sites.

*D. State Director*

This person must have sufficient knowledge and experience to expand HS/HT at a state level. Attach the resume or position description of the state director to the application.

*E. Data*

Describe plans to report the demographic characteristics of students, types of programming activities and program outcomes (post-secondary education and employment) of youth with disabilities served through HS/HT in the state; and compare their performances with students not enrolled in the program.

*F. Resources*

Describe the strategy for gaining the support of area employers, people with disabilities and their family members. Identify federal, state, and local public sector resources, as well as local non-profit sector resources which will be leveraged for purposes of sustainability after the grant period ends.

*G. Technical Assistance*

Document a willingness to cooperate with ODEP and its technical assistance efforts to provide information and advice to other states on how the HS/HT model can be replicated.

*H. Outreach*

Describe how the needs of individuals with disabilities from diverse cultures and/or ethnic groups will be addressed.

*I. Management Plan*

Provide a detailed management plan for project goals, objectives, and activities for the state level HS/HT operations.

**V. Funding Availability**

The period of performance will be 24 months from the date of execution by the Government. Up to five competitive grants will be awarded in the range of $100,000 to $250,000. It is expected that the funds used for this SGA will support the costs associated with the development, implementation, and evaluation of state level HS/HT programs.

The funds may be used to conduct a variety of activities to support state-level HS/HT operations such as staff training, strategic planning, assessment, curriculum/ materials development, career development, student-focused planning, program alignment, partnership building, etc. Funds are not intended to provide direct services to youth.

**VI. Eligible Applicants**

Eligible applicants are State Workforce Investment Boards; State Departments of Education; State Departments of Labor; State Developmental Disability Councils; State Departments of Vocational Rehabilitation; or State Committees affiliated with the National Governors' Committees for People with Disabilities, or other similar state agencies. ''State'' in this context includes the 50 states, the District of Columbia, Puerto Rico, the U. S. Virgin Islands, Guam, and American Samoa. Each grantee must, at a minimum, involve members of three of the other above-mentioned groups in strategic planning and implementation activities with the State Workforce Investment Board constituting a mandatory partner.

Indian and Native American Tribal entities, or consortia of Tribes, with the written approval of their tribal council, are also eligible to receive these grants. Grants to Indian and Native American tribal grantees must recognize principles of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act, allowing for the government-to-government relationship between the Federal and Tribal Governments. Tribal entities also must involve, at a minimum, members of three of the other groups mentioned above in strategic planning and implementation activities with the State Workforce Investment Board constituting a mandatory partner.

**VII. Application Contents**

General Requirements—Two copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. There are three required sections of the application. Requirements for each section are provided in this application package.

*Part I—Executive Summary*

The Executive summary should be no more than 2 single-spaced, single-sided pages in length giving a clear summary of the project narrative.

Each application must provide an executive summary, which identifies the following:

- The applicant;
- The type of organization the applicant represents and the additional consortium partners and the type of organization they represent;
- The amount of funds requested;
- The planned period of performance; and
- The extent to which Vocational Rehabilitation and the WIA System will be integrated or coordinated with the HS/HT system.

*Part II—Project Narrative (Appendices—Letters of Commitment, Resumes, etc.)*

Applicants must include a narrative that addresses the Statement of Work in Part IV and the selection criteria that are used by reviewers in evaluating the application. Part II must be limited to no more than twenty-five (25) pages. This page limit does not apply to Part I, the Executive Summary; Part III the Project Financial Plan (Budget); and the Appendices (the assurances and certifications, resumes, a bibliography or references, and the letters of support.) A page is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch.)

Applicants must include in Part II of the proposal a narrative that addresses all of the Evaluation Criteria (section VIII below) that will be used by reviewers in evaluating individual proposals.

*Part III—Project Financial Plan (Budget)*

Applications must include a detailed financial plan that identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Plan must contain the SF–424, Application for Federal Assistance (Appendix A) and a Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award.

**VIII. Evaluation Criteria/Selection**

*A. Evaluation Criteria*

The application must include appropriate information of the type described below.

1. Significance of the Proposed Project (20 Points)

In determining the significance of the proposed project, the Department will consider the following factors:

a. The potential contribution of the proposed project to increase the quality of transition services available in the state;

b. The current level of HS/HT activity in your state and those sites' commitment to work with this application;

c. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

d. The extent to which the proposed project involves the development or demonstration of promising new strategies that build upon existing HS/HT strategies;

e. The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for the products to be used effectively in a variety of other states; and

f. The importance or magnitude of the results that are likely to be attained by the proposed project.

2. Quality of the Project Design (30 points)

In evaluating the quality of the proposed project design, the Department considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved are clearly specified and measurable;

b. The extent to which the design of the proposed project features innovative methods for developing new sites and/or strengthening existing sites;

c. The extent to which the proposal incorporates the strategic plan in Part IV, Statement of Work;

d. The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant;

e. The extent to which the proposed budget and narrative justification are adequate to support the proposed project.

f. The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community and HS/HT sites, State, and Federal resources;

g. The extent to which the applicant encourages involvement of young people with all disabilities, relevant experts, and organizations in project activities; and,

h. The extent to which performance feedback and continuous improvement

are integral to the design of the proposed project.

3. Quality of Project Personnel (10 points)

The Project Narrative must describe the proposed staffing of the project. In addition, it must identify and summarize the qualifications of the personnel who will carry it out.

The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities. In addition, the Department considers the qualifications, including relevant education, training and experience of key project personnel as well as the qualifications, including relevant training and experience, of project consultants or subcontractors. Resumes must be included in the Appendices.

4. Plan for Sustaining the Statewide HS/HT Program Through Leveraging of Other Resources (25 points)

The Project Narrative must describe a detailed plan for sustaining this project after grant funds cease. Sustainability must be an objective built into the design and ongoing operation of the project. Projects funded under this SGA must leverage a combination of federal, state, and local public sector resources, as well as local non-profit sector resources for purposes of sustainability.

In evaluating the quality of the plan for sustainability, the Department considers the following factors to be of particular importance:

- The extent to which vocational rehabilitation monies are leveraged effectively; and
- The likelihood of the applicant successfully securing state ownership and participation in these projects when these grant funds cease.

Grantees are expected to use this grant as seed money to develop other public and private resources in order to ensure sustainability of grant activities following completion of the funding period. The Department considers detailed commitments for specific new activities as more important than promises of in-kind supports in showing sustained support for the project. Grants recently received from another agency can be discussed in the proposal, but the applicant should be precise about which activities precede this grant and which will occur because of this grant. In addition, the applicant should detail how public sector commitments can contribute to the sustainability of this project following completion of the grant. Examples of the types of public and private sector commitments envisioned include the following:

- The school system commits to offering credit for HS/HT training activities.
- The vocational rehabilitation office commits to funding assistive technology and transportation services for students enrolled in the program.
- A community college commits to providing technology training for HS/HT students.
- State-level elected officials commit to work towards state codification of High School/High Tech.
- An employer commits to providing technology based summer internships.
- State and Local Workforce Investment Boards commit to paying internship costs.
- A university commits to providing scholarships for HS/HT students.
- A developmental disability council commits to funding a new HS/HT site.
- An independent living center commits a staff person to work full time on HS/HT.

*Letters of Commitment.* Applicants can include letters of support if they provide specific commitments. Such letters can increase an applicant's score by showing that the commitments in the text of the proposal are serious. Form letters will not be considered. We encourage applicants to have letters of support from all existing HS/HT programs in their states.

*Letter from the Governor.* A letter from the Governor or functionally equivalent entity reflecting support of state level participation in the High School/High Tech program will be viewed favorably. If a letter from the Governor is not feasible, the application must include a letter from the head of an appropriate state agency.

5. Quality of the Management Plan (15 points)

In evaluating the quality of the management plan for the proposed project, the Department will consider the following factors:

a. The extent to which a management plan for project implementation is likely to achieve the objectives of the proposed project on time and within budget, including defined staff responsibilities, and time allocated to project activities, time lines, milestones for accomplishing project tasks and project deliverables;

b. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and,

c. The extent to which the time commitments of the state director and/or principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

*B. Selection Criteria*

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB Circulars require, and an entities procurement procedures must require that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, *i.e.,* avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (*see* Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

1. findings of the grant technical evaluation panel;
2. geographic distribution of the competitive applications;
3. assuring a variety of different program designs; and,
4. the availability of funds.

**IX. Reporting**

The Department of Labor is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement, the grant agreement and other applicable administrative requirements. Applicants should assume that Department staff or their designees will conduct at least one on-site project review. In addition, all grantees will be expected to provide information on outcomes (post-secondary education and employment) of the youth with disabilities served through the HS/HT program.

Applicants must submit on a quarterly basis, beginning ninety days from the award of the grant, financial and participation reports under this program as prescribed by OMB Circular A–102 and A–110, as codified by 29 CFR parts 97 and 95 respectively. Specifically the following reports will be required:

1. *Quarterly reports;* The quarterly report is estimated to take five hours to complete. The form for the Quarterly Report will be provided by ODEP. The Department will work with the grantee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.

2. *Standard Form 269;* Financial Status Report Form, on a quarterly basis.

3. *Final Project Report;* including an assessment of project performance and outcomes achieved. The final report is estimated to take twenty hours. This report will be submitted in hard copy and on electronic disk using a format and following instructions, which will be provided by the Department. A draft of the final report is due to the Department thirty days before the termination of the grant. The final report is due to DOL sixty days following the termination of the grant.

DOL will arrange for and conduct an independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant post secondary and employment data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation.

**X. Administration Provisions**

*A. Administrative Standards and Provisions*

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grant awarded under this SGA shall be subject to the following as applicable:

*29 CFR part 95*—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;

*29 CFR part 96*—Audit Requirements for Grants, Contracts, and Other Agreements.

*29 CFR part 97*—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

*B. Allowable Cost*

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB Circular A–87

Nonprofit Organizations—OMB Circular A–122

Profit-Making Commercial Firms—48 CFR part 31

Profit will *not* be considered an allowable cost in any case.

*C. Grant Assurances*

As a condition of the award, the applicant must certify that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

*29 CFR part 31*—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964.

*29 CFR part 32*—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794).

*29 CFR part 36*—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*).

*29 CFR part 37*—Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA), (Implementing Section 188 of the Workforce Investment Act, 29 U.S.C. 2938).

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

Signed at Washington, DC, this 16th day of July, 2002.

**Lawrence J. Kuss,**

*Grant Officer.*

APPENDIX A. Application for Federal Assistance, Form SF 424

APPENDIX B. Budget Information Sheet, Form SF 424A

APPENDIX C. Assurances and Certifications Signature Page

**BILLING CODE 4510–CX–P**

## APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

| | | | |
|---|---|---|---|
| | | **2. DATE SUBMITTED** July 16, 2002 | Applicant Identifier |
| **1. TYPE OF SUBMISSION:** | | **3. DATE RECEIVED BY STATE** | State Application Identifier |
| Application ☐ Construction ☐ Non-Construction | Preapplication ☐ Construction ☐ Non-Construction | **4. DATE RECEIVED BY FEDERAL AGENCY** | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, State, and zip code):* | Name and telephone number of person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER** *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**

☐☐ – ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.):*

| **13. PROPOSED PROJECT** | | **14. CONGRESSIONAL DISTRICTS OF:** | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ 0.00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| | | |
|---|---|---|
| a. Type Name of Authorized Representative | b. Title | c. Telephone Number |
| d. Signature of Authorized Representative | | e. Date Signed |

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>-- "New" means a new assistance award.<br>-- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>-- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

## BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ 0.00 |
| 2. | | | | | | 0.00 |
| 3. | | | | | | 0.00 |
| 4. | | | | | | 0.00 |
| 5. Totals | | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ 0.00 |
| b. Fringe Benefits | | | | | 0.00 |
| c. Travel | | | | | 0.00 |
| d. Equipment | | | | | 0.00 |
| e. Supplies | | | | | 0.00 |
| f. Contractual | | | | | 0.00 |
| g. Construction | | | | | 0.00 |
| h. Other | | | | | 0.00 |
| i. Total Direct Charges *(sum of 6a-6h)* | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| j. Indirect Charges | | | | | 0.00 |
| k. TOTALS *(sum of 6i and 6j)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |
| 7. Program Income | $ | $ | $ | $ | $ 0.00 |

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ 0.00 |
| 9. | | | | 0.00 |
| 10. | | | | 0.00 |
| 11. | | | | 0.00 |
| 12. TOTAL *(sum of lines 8-11)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ 0.00 | $ | $ | $ | $ |
| 14. Non-Federal | 0.00 | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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**Standard Form 424A (Rev. 7-97) Page 2**

## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

## ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

D. Applicant is not a 501 (c) (4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

**Please Note:** **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 02–18423 Filed 7–19–02; 8:45 am]
**BILLING CODE 4510–CX–C**

## DEPARTMENT OF LABOR

### Office of Disability Employment Policy; Working for Freedom, Opportunity and Real Choice Through Community Employment (WorkFORCE) Grant Initiative: Supporting the Coordination and Delivery of Competitive Employment Opportunities That Facilitate People With Disabilities Living and Working in Their Communities

**AGENCY:** Office of Disability Employment Policy, Labor.

**ACTION:** Notice of availability of funds and solicitation for grant applications for WorkFORCE coordinating and action grants) (SGA 02–20 and SGA 02–21).

**SUMMARY:** This notice announces the availability of $6.0 million in grant funding through the Department of Labor's Working for Freedom, Opportunity and Real Choice through Community Employment (WorkFORCE) Grant Initiative. This new initiative represents the Department of Labor's continued support for increasing and improving employment opportunities that allow individuals with disabilities to: (1) Move from nursing homes or other institutions and residential facilities into the community; (2) continue living in the community; (3) achieve economic self-sufficiency; and (4) attain full access to, and participation in, their communities.

This WorkFORCE Grant Initiative includes two distinct competitive Solicitations for Grant Applications (SGAs), the WorkFORCE Coordinating Grants SGA and the WorkFORCE Action Grants SGA:

- WorkFORCE Coordinating Grants (SGA 02–20): These grants, ranging from $100,000 to $150,000, are to assist in coordinating, strategizing and developing competitive, customized community employment opportunities for individuals with disabilities so that they may live, work, and fully participate in their communities.
- WorkFORCE Action Grants (SGA 02–21): These grants are demonstration grants, ranging from $400,000 to $750,000, to begin or expand the delivery and implementation of competitive, customized community employment opportunities for individuals with disabilities so that they may live, work, and fully participate in their communities.

The application and evaluation/selection criteria for both SGAs are included in this Notice of Funding Availability. State agencies, nonprofit organizations, a consortium of public and private entities, and Indian and Native American Tribal entities, or consortia of Tribes, with the written approval of their tribal council are eligible applicants for the WorkFORCE Coordinating Grants. Nonprofit organizations, either individually or as part of a consortium, are eligible applicants for the WorkFORCE Action Grants.

*Deadline for Submission of Grant Applications:* To be considered under the Fiscal Year 2002 funding cycle, grant applications must be submitted by the deadlines listed below:

WorkFORCE Coordinating Grants, August 21, 2002

WorkFORCE Action Grants, August 21, 2002

*Submission of Applications:* Applicants are required to submit one ink-signed original and two copies of the complete application for each grant for which they are applying to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 02–20 or SGA 02–21, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210 by no later than 4:45 p.m. Eastern Daylight Savings Time (EDST) on August 21, 2002. Both the WorkFORCE Coordinating Grants and the WorkFORCE Action Grants have the same closing date, August 21, 2002. Applications for either grant received after these closing dates will not be considered.

*Late Proposals:* All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. Therefore, it is recommended that you confirm receipt of your application(s) by contacting Cassandra Willis, U.S. Department of Labor, Procurement Services Center, at (202) 693–4570, prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

**Acceptable Methods of Submission**

The grant application package must be received at the designated place by the date and time specified or it will *not* be considered. Any application received at the Office of Procurement Services Center after 4:45 p.m., EDST, August 21, 2002, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 21, 2002; or

2. It was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days, excluding weekends and Federal holidays, prior to August 21, 2002; and/or

3. 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.

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 shall 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 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 Procurement Services Center 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 Department does not accept dates or date stamps on such packages as evidence of timely mailing. Thus, the applicant bears the responsibility of timely submission.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to concerns involving anthrax contamination. All applicants 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 Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339.

**FOR FURTHER INFORMATION, CONTACT:** Questions concerning this solicitation may be directed to Cassandra Willis, at (202) 693–4570. Persons who are deaf or hard of hearing may contact the Department via the Federal Relay Service, (800) 877–8339. Application announcements or forms will not be mailed. They are published in the **Federal Register** which may be obtained from your nearest U.S. Government office or public library. In addition, you can obtain up-to-date general information about the WorkFORCE Grants, as well as the complete grant solicitations for both the WorkFORCE Coordinating Grants and the WorkFORCE Action Grants, please check our web site at: *http://www2.dol.gov/odep/.*

**SUPPLEMENTARY INFORMATION:**

## I. Authority

Consolidated Appropriations Act, 2001, Public Law 106–554, 114 Stat. 2763; 29 U.S.C. 557b; DOL, HHS, Education and Related Appropriations Act, 2002, Public Law 107–116, 115 Stat. 2177.

## II. Background

In *Olmstead* v. *L.C.,* 119 S.Ct. 2176 (1999) (the ''Olmstead decision''), the Supreme Court construed Title II of the Americans with Disabilities Act (ADA) to require states to place qualified individuals with mental disabilities in community settings, rather than in institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the state can reasonably accommodate the placement, taking into account the resources available to the state and the needs of others with disabilities. The Department of Justice regulations implementing Title II of the ADA require public entities to administer their services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, 28 CFR 35.130(d).

The Supreme Court stated that institutional placements of people with disabilities who can live in, and benefit from, community settings perpetuates the unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life and that ''...confinement in an institution severely diminishes everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.'' *Olmstead,* 119 S.Ct. 2176, 21789, 2187 [emphasis added]. This decision affects not only all persons in institutions and segregated settings, but also people with disabilities who are at-risk of institutionalization, including people with disabilities on waiting lists to receive community based services and supports.

The Court indicated that one way states can show they are meeting their obligations under the ADA and the *Olmstead* decision is to develop a ''comprehensive, effectively working plan for placing qualified people with mental disabilities in less restrictive settings.'' *Olmstead* at 2179. Based on this, almost all the states are in the process of developing, or have already developed such plans.

In support of these state efforts, on June 18, 2001, President Bush issued Executive Order 13217-Community-Based Alternatives for Individuals with Disabilities (the *Olmstead* Executive Order), which extended application of the Supreme Court's Olmstead decision to all Americans with disabilities, and called upon selected federal agencies, including the U.S. Department of Labor, to help support governors in their implementation of the *Olmstead* decision. In support of these state efforts and in response to the direction set forth in Executive Order 13217, the U.S. Department of Labor is issuing this SGA for the WorkFORCE Coordinating Grants and WorkFORCE Action Grants.

In March 2002, the U.S. Secretary of Health and Human Services, Tommy G. Thompson, submitted a report to President Bush, titled Delivering on the Promise, on behalf of the Departments of Labor (DOL), Justice (DOJ), Education (ED), Housing and Urban Development (HUD), Transportation (DOT), Veterans Affairs (VA), and the Social Security Administration (SSA) and Office of Personnel Management (OPM). This report detailed actions being planned by the aforementioned agencies to eliminate barriers and promote community integration. *See http://www.hhs.gov/newfreedom/final.* In this report, DOL and other Federal agencies noted that successful Olmstead planning and implementation efforts must include competitive employment and employment-related supports. Delivering on the Promise identifies several key concerns related to employment that must be addressed, including:

- Fragmentation of existing employment services;
- Isolation and segregation of people with disabilities from ''mainstream'' or generic employment programs and services;
- Lack of access to health insurance;
- The complexity of existing work incentives that are supposed to encourage and/or support work efforts;
- Lack of control and choice in selecting employment training and service providers;
- Inadequate work opportunities resulting from attitudinal barriers based on historical and erroneous stereotypes; and
- Lack of accurate data on employment of people with disabilities needed to measure progress in eliminating barriers to their employment.

These WorkFORCE grants are meant to offer opportunities that respond to these issues.

Additionally, these grants support the President's New Freedom Initiative. The New Freedom Initiative is designed to increase the number of people with disabilities who enter, re-enter, and remain in the workforce. By emphasizing the need to increase the capacity of Federally-supported employment and training programs to serve people with significant disabilities, including those covered by the *Olmstead* decision and Executive Order, the current SGA will further the New Freedom Initiative's goals of increased integration of Americans with disabilities into the workforce.

These grants will also support other Federal and state initiatives already underway to make working and living in the community a reality for more people with disabilities, including the state planning and implementation efforts under the U.S. Supreme Court's *Olmstead* decision; the *Olmstead* Executive Order; the Department of Health and Human Services Systems Change Grants; the DOL Work Incentive Grants and Customized Employment Grants; and other related grant opportunities and efforts by DOL, the Department of Health and Human Services, and the Social Security Administration under the Workforce Investment Act (WIA) and the Ticket to Work and Work Incentives Improvement Act (TWWIIA).

Many strategies exist for creating and expanding competitive employment opportunities in the community, especially for people with significant disabilities who were for many years considered unemployable, including individuals who have been segregated in institutions, sheltered workshops, nursing homes, and day activity programs. Many related practices and promising strategies have emerged through decades of research and demonstration projects, and through other public and private activities promoting increased choice and self-

determination for people with disabilities. These include multiple ''customized'' employment approaches such as supported employment and supported entrepreneurship; individualized job development; job carving and restructuring; use of personal agents (including individuals with disabilities and family members); development of micro-boards, micro-enterprises, cooperatives and small businesses; and the use of personal budgets and other forms of individualized funding that provide choice and control to the person and promote self-determination.

WIA established comprehensive reform of existing Federal job training programs with and impacted service delivery under the Wagner-Peyser Act, Adult Education and Literacy Act, and the Rehabilitation Act. A number of other Federal programs are also identified as required partners in the One-Stop delivery system in order to provide comprehensive services for all Americans to access the information and resources available to assist them in the development and implementation of their career goals. The purpose of the One-Stop system is to establish programs and providers in co-located and integrated settings that are accessible for individuals and businesses alike in approximately 600 workforce investment areas established throughout the nation.

The One-Stop Centers, which comprise the heart of this system, are in a position to expand employment opportunities for people with disabilities by helping to ensure that the workforce system is accessible both physically and programmatically. To accomplish this expansion, however, additional state and local organizations must be involved. Partners necessary to the success of this endeavor include, but are not limited to, the following: state programs for individuals with cognitive and developmental disabilities; Medicaid; mental health and substance abuse agencies and organizations; transportation and assistive technology providers; Small Business Development Centers; secondary education programs; community colleges; University Centers for Excellence in Developmental Disabilities; foundations; and community-based and faith-based organizations.

Innovative partnerships hold the promise of dramatically increasing both employment and wages for people with disabilities, in part by increasing their choices for integrated, competitive employment, business ownership, entrepreneurship, and other customized employment options.

In response to these considerations and in view of the potential resources described above, ODEP will pursue a two-pronged approach in its new Working for Freedom, Opportunity and Real Choice through Community Employment (WorkFORCE) Grant Initiative:

- Awarding WorkFORCE Coordinating Grants to provide an opportunity to expand state coordination, planning and development efforts related to Olmstead plans.
- Awarding WorkFORCE Action Grants to demonstration projects that develop and/or expand the capacity of communities to support the employment-related needs of individuals with disabilities.

The combination of these efforts will substantially contribute to the President's New Freedom Initiative and will further the objectives of the President's Executive Order 13217.

## III. Workforce Coordinating Grants (SGA 02–20)

### *A. Overview*

ODEP will award up to $4.0 million in grant funding for WorkFORCE Coordinating Grants to fund up to twenty-seven grants, with the average grant size ranging between $100,000—$150,000 for one year. These grants are part of the Department of Labor's continued efforts to increase the employment rate of people with disabilities. The purpose of the WorkFORCE Coordinating Grants is to support the development and coordination of competitive, customized employment strategies and opportunities for people with disabilities who want to: (1) Move from nursing homes or other institutions or residential facilities into the community; (2) continue living in the community; (3) achieve economic self-sufficiency; and (4) attain full access to, and participation in, their communities.

Eligible applicants for the WorkFORCE Coordinating Grants are state agencies; nonprofit, faith-based, and community organizations; a consortium of public and private entities; and Indian and Native American Tribal entities, or consortia of Tribes.

In this SGA, ODEP is also announcing the availability of up to $2.0 million in WorkFORCE Action Grants to fund two to four community employment demonstration projects ranging from $400,000–$750,000 per year for up to five years. Applicants for both of these grants must document through a letter signed by their state's governor or functionally equivalent entity, or his/her designee for *Olmstead* implementation, that the proposed grant activities will be regarded as one of their state's official demonstration program(s) for overall *Olmstead* implementation. If a particular state is supporting applications for both a WorkFORCE Coordinating and WorkFORCE Action grant, the letter signed by the sanctioning entity must additionally reflect that the state will work with the applicants to ensure that the activities of the two grants are coordinated. In addition, applicants must provide a detailed explanation of the specific procedures and approaches that will be put in place to ensure coordination of grants.

### *B. Purpose of Coordinating Grants*

The WorkFORCE Coordinating Grants are designed to provide states with an opportunity to expand and better coordinate their statewide overall *Olmstead* planning and implementation efforts, with an emphasis on coordinating the delivery of employment-related services and supports to people with disabilities, including those provided through the workforce development system and its One-Stop Career Center system. The Coordinating Grants are intended to enhance the ability of states, disability organizations, and other relevant entities to engage in strategic statewide coordination, planning and development leading to improved and/or increased opportunities for customized, competitive community employment for people with disabilities.

These coordination efforts must include the involvement of many key partners, especially those associated with the workforce development system, including the One-Stop Centers; those involved in developing and implementing Medicaid buy-ins and other work incentives related to Social Security disability benefits and programs; and those partners involved in HHS Systems Change, Real Choice, and Nursing Home Transition grants, which also target individuals with disabilities who are covered by the *Olmstead* decision and Executive Order. In addition, coordination must include entities that currently receive relevant DOL grants, including the Work Incentive Grants (WIGs) and the Customized Employment grants, and other appropriate DOL initiatives. *See www2.dol.gov/odep/.*

The target groups to be served are people with disabilities who are either unemployed or under-employed and:

• In non-work, segregated work or transitioning to work settings; or

• Anticipated to be or are determined to be covered under the *Olmstead* decision and/or Executive Order and therefore part of the state's *Olmstead* planning process; or,

• Awaiting employment services and supports following a move from a residential facility, or as part of a plan to move into a community under the *Olmstead* decision and/or Executive Order.

For purposes of this solicitation, customized employment means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of the strengths, needs, and interests of the person with a disability, and is also designed to meet the specific needs of the employer. It may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being individually customized and negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

*C. Statement of Work for Coordinating Grants*

All applicants shall describe their proposal for coordinating and developing community employment opportunities, including how they will work to ensure that their state's overall *Olmstead* implementation plan fully addresses providing competitive, customized employment options for people with disabilities who are transitioning to, or living in, the community. Grant applications must include proposed methods for coordinating efforts with a wide variety of state agencies or entities. Some of the agencies and entities that should be included are: (1) State and local Workforce Investment Boards and One-Stop Career Centers; (2) Vocational Rehabilitation; (3) Medicaid, Developmental Disabilities; (4) Mental Health; (5) Substance Abuse; (6) Public Health; (7) Temporary Assistance for Needy Families (TANF); (8) Governors' Developmental Disability Councils, Governors' Committees on Employment of People with Disabilities; (9) University Centers for Excellence in Disabilities; (10) individuals with disabilities; (11) centers for independent living; (12) advocacy and consumer groups; (13) employers; (14) community- and faith-based organizations, family members, and other appropriate organizations and stakeholders.

WorkFORCE coordination activities must include development and implementation of cross-agency strategies that will link employment supports and services into the current overall *Olmstead* planning process. The activities should be designed to help support the movement of people with significant disabilities from segregated settings to integrated settings, particularly customized, competitive employment opportunities in the community.

The grant will result in the development of coordinated, strategic plans and actions that offer leadership and detail as to how various delivery systems and related agencies and organizations are working, and can work, to better meet the community employment needs of people with significant disabilities. These activities must include strategies to provide training and staff development to increase organizational capacity to serve the target population with needed customized employment services. Coordination with the state's other *Olmstead* activities and planning efforts is mandatory, as is the institution of objectives measures of evaluation to document project success.

Grantees for the WorkFORCE Coordinating Grants must engage in collaborative activities across relevant stakeholder groups, including both required and non-required WIA partners, persons with disabilities, their parents and other family members, advocates, employers, community rehabilitation agencies, and others, as appropriate. The commitment of key personnel to this effort will be very important to the success of the grant.

Appropriate actions and activities which may be undertaken under the WorkFORCE Coordinating Grants include the following:

1. Identification of the major barriers to integrated and competitive community employment that affect people with significant disabilities who are transitioning into, or already living in, the community;

2. Research to establish or foster the development or expansion of promising practices (including customized employment strategies such as supported employment; supported entrepreneurship; individualized job placement; job carving and restructuring; use of personal agents; development of micro-boards, micro-enterprises, cooperative, and small businesses; use of personal budgets and other forms of individualized funding that provide choice and control and promote self-determination) that have demonstrated increased employment outcomes for people with significant disabilities;

3. Involvement of agencies, organizations, employers, and individuals currently active in the overall *Olmstead* planning process and those who need to become involved;

4. Development of plans for implementing cross-agency strategies that will assure that employment in integrated, competitive work settings is part of the overall *Olmstead* plan and is available as an option for the targeted population;

5. Development of strategies for capacity building and linking of relevant resources to the overall workforce development activities in the state;

1. Identification of specific roles and responsibilities that the agencies, both public and private, should fulfill in order to provide increased and improved competitive, customized employment opportunities in the community;

7. Identification of the necessary resources, financial and non-financial, to continue to implement these actions and provide increased and improved competitive customized employment opportunities in the community, in ways that provide increased control and choice for individuals with disabilities;

8. Development of strategies for how existing state *Olmstead*-related activities will be coordinated and involved in employment programs for the target population;

9. Identification of specific ways people with disabilities and, when appropriate, their family members will be involved in the development and growth of competitive, customized community employment options in non-stereotypical jobs;

10. Identification of specific ways employers and businesses will be involved in developing and supporting increased and improved competitive, customized community employment options;

11. Identification of long-term strategies to pursue for needed systemic changes;

12. Development of Memoranda of Understanding, letters of support, etc., to carry out the coordination activities, including commitments, resources, time lines, outcomes (*e.g.,* how many people will be served);

13. Development of a data collection system designed to document community employment results for

people with disabilities who are transitioning from institutions to the community and/or currently living in the community;

Grantees must account for the travel costs associated with sending at least one representative for two days to a mandatory annual ODEP Grantees' training conference, to be held in Washington, DC in their grant budget.

Grantees must also agree to work with ODEP and its various technical assistance efforts in order to share with others what is learned about delivering competitive, customized community employment services to individuals with disabilities.

*D. Funding Availability for Coordinating Grants*

The Department of Labor anticipates awarding at least 30 grants, with a range of $100,000 to $150,000 each. These awards will be for a one-year period of performance.

*E. Eligible Applicants for Coordinating Grants*

Eligible applicants for the WorkFORCE Coordinating Grants are state agencies, nonprofit organizations, or a consortium of public and private entities, which have been designated, authorized, and/or approved by the governor of the state, the governmental body's functionally equivalent entity, or the governor or equivalent entity's designee for *Olmstead* implementation to:

- Lead the state's overall *Olmstead* implementation effort or
- Develop and/or lead the specific component of the state's overall *Olmstead* implementation effort that relates to employment.

''State'' in this context includes the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. Indian and Native American Tribal entities, or consortia of Tribes, with the written approval of their tribal council, are also eligible applicants to receive these grants. Grants awarded to tribal entities are to be used in coordinating, strategizing, and developing competitive, customized community employment opportunities for individuals with disabilities in a specific Indian community or covering multiple Tribal entities so that they may live, work and fully participate in their communities. Grants to Indian and Native American tribal grantees must recognize principles of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act, allowing for the government-to-government relationship between the Federal and Tribal Governments.

*F. Application Contents for Coordinating Grants*

General Requirements—Two copies and one ink-signed original of the proposal must be submitted. Proposals must be submitted by the applicant only. There are three required sections of the application. Requirements for each section are provided in this application package.

Part I—Executive Summary

The Executive Summary must be no more than 2 single-spaced pages in length giving a clear summary of the project narrative.

Part II—Project Narrative—(Appendices: Letters of Commitment/Support, Resumes, etc.)

Applicants must include a project narrative that addresses the Statement of Work in Part III, Section C of this notice and the evaluation criteria that are used by reviewers in evaluating the application in Part III, Section G. Applicants that are consortium of public and private entities must include a copy of their consortium's partnership agreement in the Appendices.

You must limit the project narrative to the equivalent of no more than thirty pages using the following standards. This page limit does not apply to Part I, the Executive Summary; Part III, the Project Financial Plan (Budget); and, the Appendices (the assurances and certifications, consortium partnership agreement (where applicable), resumes, bibliography or references, and the letters of support). A page is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch.)

Part III—Project Financial Plan (Budget)

Applications must include a detailed financial plan that identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Plan must contain the SF–424, Application for Federal Assistance (Appendix A) and a Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

*G. Evaluation and Selection Criteria for Coordinating Grants*

A. Evaluation Criteria

The application must include information of the type described below.

1. Significance of the Proposed Project (20 points)

In determining the significance of the proposed project, the Department considers the following factors:

a. The potential contribution of the proposed project to increase knowledge or understanding of problems, issues, or effective strategies for coordinating state-wide *Olmstead* planning and implementation efforts, with an emphasis on coordinating the delivery of employment-related services and supports;

b. The extent to which the applicant demonstrates an understanding of the issues the state is currently facing in their overall *Olmstead* implementation efforts;

c. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

d. The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

e. The potential replicability (national significance) of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings; and,

f. The importance or magnitude of the results that is likely to be attained by the proposed project

2. Quality of the Project Design (30 points)

In evaluating the quality of the proposed project design, the Department considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

b. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population and other identified needs;

c. The extent to which the design of the proposed project provides procedures and approaches for coordination with key agencies and organizations, identification of critical roles, and a plan for implementation of competitive, customized community employment strategies;

d. The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant;

e. The extent to which the proposed project will be coordinated, including demonstrated support from the state governor or designated Olmstead agency and commitment from key organizations and agencies;

f. The extent to which the applicant encourages involvement of people with disabilities and their families, experts and organizations, and other relevant stakeholders in project activities; and,

g. The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

3. Quality of Project Personnel (15 points)

The Project Narrative must describe the proposed staffing of the project and must identify and summarize the qualifications of the personnel who will carry it out. In addition, the Project Narrative must summarize the qualifications, including relevant education, training and experience of key project personnel as well as the qualifications, including relevant training and experience of project consultants or subcontractors. Resumes must be included in the Appendices.

4. Adequacy of the Budget (10 points)

In evaluating the adequacy of the budget for the proposed project, the Department considers the following factors:

a. The extent to which the budget is adequate to support the proposed project; and

b. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

The applicant may include letters of commitment from proposed partners in the Appendix.

5. Quality of the Management Plan (15 points)

In evaluating the quality of the management plan for the proposed project, the Department considers the following factors:

a. The extent to which the management plan for project implementation achieves the objectives of the proposed project on time and within budget, including clearly defined staff responsibilities, and time allocated to project activities, time lines, milestones for accomplishing project tasks and project deliverables;

b. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and

c. The extent to which the time commitments of the project director and/or principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

6. Quality of the Project Evaluation (10 points)

In evaluating the quality of the project's evaluation design, the Department considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, context, and outcomes of the proposed project;

b. The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

c. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

d. The extent to which the evaluation will provide information to other programs about effective strategies suitable for replication or testing in other settings; and,

e. The extent to which the methods of evaluation measure in both quantitative and qualitative terms, program results and satisfaction of people with disabilities.

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require, that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., to avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

1. Findings of the grant technical evaluation panel;

2. Geographic distribution of the competitive applications;

3. Assuring a variety of program designs; and,

4. The availability of funds.

*H. Reporting for Workforce Coordinating Grants*

The Department of Labor is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement, the grant agreement and other applicable administrative requirements.

Grantees will be required to submit periodic financial and participation reports under the WorkFORCE Coordinating Grant program. Specifically the following reports will be required:

1. Semi-Annual Reports; The Semi-Annual Report is estimated to take ten hours to complete. The form for the Semi-Annual Report will be provided by ODEP. It is designed to measure progress in reaching the objectives of the Grant.

2. Standard Form 269; Financial Status Report Form, on a quarterly basis.

3. Final Project Report; including an assessment of project performance and outcomes achieved. The final report is estimated to take 20 hours. This report will be submitted in hard copy and on electronic disk following the format and instructions provided by DOL/ODEP. A draft of the final report is due to DOL 45 days before the termination of the grant. The final report is due to DOL 60 days following the termination of the grant.

Applicants for the WorkFORCE Coordinating Grant Program should proceed to Section I, Administration Provisions.

**IV. Workforce Action Grants (SGA 02–21)**

*A. Overview*

The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP) announces the availability of up to $2.0 million to award between two to four grants, ranging from $400,000 to $750,000 each, to develop demonstration programs to support the development and coordination of competitive, customized employment opportunities in non-stereotypical jobs for people with disabilities who want to (1) move from nursing homes, residential facilities, or other institutions into the community, (2) continue living in the community, (3) achieve economic self-sufficiency, and (4) attain full access to, and participation in, their communities.

These demonstration grants are for a one-year implementation period with four optional additional years, depending upon project performance and funding availability at varying funding levels. These grants are designed to provide competitive, customized, community employment services that lead to non-stereotypical jobs for people with significant disabilities.

In this SGA, ODEP is also announcing the availability of up to $4.0 million in WorkFORCE Coordinating Grants. Applicants for both of these grants must document through a letter signed by their state's governor or functionally equivalent entity, or his/her designee for *Olmstead* implementation, that the proposed grant activities will be regarded as one of their state's official demonstration program(s) for overall *Olmstead* implementation. If a particular state is supporting applications for both a WorkFORCE Coordinating and WorkFORCE Action grant, the letter signed by the state's sanctioning entity must additionally reflect that the state will work with the applicants to ensure that the activities of the two grants are coordinated. In addition, applicants must provide a detailed explanation of the specific procedures and approaches that will be put in place to ensure coordination of grants in their Project Narrative.

These grants are part of the Department of Labor's continued efforts to increase the employment rate of people with disabilities. Eligible applicants for the WorkFORCE Action Grants are nonprofit organizations, either individually or as part of a consortium. Organizations applying to be demonstration sites must have approval and support from the governor, or his/her designee, as one of the state's official *Olmstead* employment demonstration grant programs.

*B. Purpose of Workforce Action Grants*

The purpose of the WorkFORCE Action Grants is to demonstrate the employment potential of people with disabilities through techniques for accomplishing competitive employment in non-stereotypical integrated settings, utilizing customized employment strategies. These efforts must include the involvement of many key partners, especially those associated with their area's One-Stop Career Centers.

The target groups to be served are people with disabilities who are either unemployed or under-employed and who are:

- In non-work, segregated work, or transitioning to work settings;
- Expected to be or are determined to be covered under the *Olmstead* decision and/or Executive Order and therefore part of the state overall *Olmstead* planning process; or,
- Awaiting employment services and supports following a move from a residential facility, or as part of a plan to move into a community under the Supreme Court's decision in *Olmstead* and/or *Olmstead* Executive Order.

For purposes of this solicitation, customized employment means individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of strengths, needs, and interests of the person with a disability, and is also designed to meet the specific needs of the employer. It may include employment developed through job carving, self-employment or entrepreneurial initiatives, or other job development or restructuring strategies that result in job responsibilities being customized and individually negotiated to fit the needs of individuals with a disability. Customized employment assumes the provision of reasonable accommodations and the supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

If proposals are submitted for both grants from a particular state, the activities of the WorkFORCE Coordinating Grant and the WorkFORCE Action Grant must be coordinated as discussed previously. Coordination and demonstration efforts can be reinforcing activities.

*C. Statement of Work for Action Grants*

Each applicant for these grants shall describe its plan for expanding capacity for, and provision of, customized employment opportunities to the target groups. Applicants must document through a letter signed by their state's governor, or his/her designee for *Olmstead* implementation, that the proposed activities will be regarded as one of their state's official demonstration program(s) for overall *Olmstead* implementation. This letter should also indicate how the lessons learned in the implementation of the WorkFORCE Action Grant demonstration project would be utilized in other communities throughout the state. Grant applications must include proposed methods for coordinating efforts with a wide variety of state agencies or entities. Some of the agencies that should be included are: employment and training agencies; state and local Workforce Investment Boards and their One-Stop Career Centers; Substance Abuse; Vocational Rehabilitation; state Education Agencies; Medicaid; Mental Retardation; Mental Health; Public Health; Temporary Assistance for Needy Families (TANF); Developmental Disability Councils; Independent Living programs; community rehabilitation providers; University Centers for Excellence in Disabilities; family members; consumers; employers; and any other key agencies or constituencies needed to offer a comprehensive service delivery model.

The demonstration grant program being described must address the movement of individuals from segregated settings to competitive, integrated, customized employment opportunities in the community. Grantees must work in coordination with their state's *Olmstead* lead agency on their state's overall *Olmstead* plan, and describe how they will contribute to the development of their state's plan and implementation strategy related to employment. Grantees must also integrate their employment strategies with their state's employment programs and services, including existing services available through the One-Stop Centers, the state and local Workforce Investment Boards, and their partners. In addition, they must coordinate their efforts with existing *Olmstead* activities and programs including grant activities and initiatives funded by the Center for Medicaid and State Operations at the U.S. Department of Health and Human Services (*e.g.,* Systems Change for Community Living Grants, State Medicaid Buy-in programs, and Medicaid Infrastructure Grants), and grant activities funded by the Center for Mental Health Services of the U.S. Department of Health and Human Services, (*e.g.,* Community-Based Care

Services for People with Psychiatric Disabilities).

Grantees must develop employment opportunities in a variety of occupations and industries based on the strengths, needs, and desires of the individual with a disability, including self-employment and entrepreneurship where appropriate. Services and supports must be organized in ways that provide informed choice and promote self-determination. In addition, grantees must establish employer involvement; track and respond to customer service and satisfaction for both persons with disabilities and employers; and provide services, including follow-up services, to ensure job retention and career development.

Grantees should establish partnerships and linkages with other relevant state entities and programs (such as Medicaid, mental health, substance abuse, transportation, State Councils on Developmental Disabilities), as well as Small Business Development Centers, community colleges, benefits counseling and assistance programs, and lending and financial institutions, whose expertise, services, and/or funds could contribute to employment services and supports needed by the *Olmstead* population in order to secure competitive, customized community employment outcomes.

Grantees must educate relevant stakeholders and systems personnel about changes needed to increase integrated, customized community employment outcomes for individuals with disabilities.

Grantees must consider the usefulness of increasing the availability of personal agents and job development personnel offering customized services through customer-controlled approaches that result in customized employment. One possible area of focus could include demonstrating the effectiveness of paying family members and/or other individuals with disabilities to serve as personal agents when selected by the individual with a disability to assist in negotiating and implementing employment plans and services. Grantees must incorporate use of funds leveraged across several systems available to people with disabilities through personal accounts or personal budgets.

Grantees may use funds in a flexible manner, as determined appropriate by input from stakeholders and identified needs, so long as requirements for outcome and evaluation data and other requirements of Federal statutes, regulations, administrative requirements, and OMB circulars and the requirements delineated in this SGA are met.

All grantees must agree to cooperate with an independent evaluation to be conducted by the DOL. DOL will arrange for and conduct this independent evaluation of the outcomes, impacts, and accomplishments of each funded grant. Grantees must agree to make available records on all parts of grant activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department.

Grantees must also agree to work with ODEP in its various technical assistance efforts in order to freely share with others what is learned about delivering customized employment services to the *Olmstead* population. Grantees also must agree to collaborate with other research institutes, centers, studies, and evaluations that are supported by DOL and other relevant Federal agencies.

*D. Funding Availability for Action Grants*

The Department of Labor anticipates awarding two to four grants, with a range of $400,000 to $750,000 each. These awards will be for one-year period of performance and may be renewed annually up to four additional years for a total of five years depending upon the availability of funds and the efficacy of the grant activities, established by independent reviews conducted by the Department of Labor or its designee. Proposals must include budgetary information for a five-year period. It is envisioned that if funding is continued for the full five years, the funding for years four and five will be at successfully lower rates, with funding during year four at 80 percent of the third year funds, and, at 60 percent during year five. Grantees are expected to use this grant as seed money to develop other public and private resources in order to ensure sustainability of grant activities following completion of the funding period. Funds may not be used for modifying buildings or equipment for physical or communication accessibility, although the strategic planning should address how resources will be leveraged for such purposes from other sources, as appropriate.

*E. Eligible Applicants for Action Grants*

Eligible applicants for these demonstration grants are non-profit organizations. Applicants must document, via a letter signed by their state's governor, or his/her designee for overall *Olmstead* implementation, that the proposed grant activities will be regarded as an official demonstration program playing a vital role in their state's *Olmstead* employment implementation effort(s). Moreover, this letter must describe how the lessons learned under this grant will be utilized to benefit other communities throughout the state, and thereby provide expanded competitive, customized employment options for people who are covered under the *Olmstead* decision and Executive Order.

*F. Application Contents*

General Requirements—Two copies and one ink-signed original of the proposal must be submitted. Proposals must be submitted by the applicant only. There are three required sections of the application. Requirements for each section are provided in this application package.

Part I—Executive Summary

The Executive Summary must be no more than two single-spaced pages in length giving a clear summary of the project narrative.

Part II—Project Narrative—(Appendices: Letters of Commitment/Support, Resumes, etc.)

Applicants must include a project narrative that addresses the Statement of Work in Part IV, Section C of this notice and the evaluation criteria that are used by reviewers in evaluating the application in Part IV, Section G. Applicants that are consortium entities must include a copy of the consortium's partnership agreement in the Appendices.

You must limit the project narrative to the equivalent of no more than 75 pages using the following standards. This page limit does not apply to Part I, the Executive Summary; Part III, the Project Financial Plan (Budget); and, the Appendices (the assurances and certifications, resumes, bibliography or references, the letters of support, and consortium partnership agreement where applicable). A page is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch.)

Part III—Project Financial Plan (Budget)

Applications must include a detailed financial plan that identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Plan must contain the SF–424, Application for Federal Assistance (Appendix A) and a Budget Information Sheet SF–424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF–424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

*F. Evaluation Criteria*

A. Evaluation Criteria

The application must include information of the type described below.

1. Significance of the Proposed Project (20 points)

In determining the significance of the proposed project, the Department considers the following factors:

a. The potential contribution of the proposed project to increase knowledge or understanding of problems, issues, or effective strategies for addressing the development and/or enhancing the capacity of the One-Stop Career Center system or other potential partners to use customized employment strategies to increase employment, choice and wages, and influence systems change;

b. The extent to which the applicant demonstrates an understanding of the issues the state and proposed geographic area are currently facing in their overall *Olmstead* implementation efforts;

c. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

d. The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

f. The extent to which the promising practices of the proposed project are to be disseminated in ways that will enable others to use the information or strategies;

g. The potential replicability (national significance) of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings; and,

h. The importance or magnitude of the results, which are likely to be attained by the proposed project.

2. Quality of the Project Design (30 points)

In evaluating the quality of the proposed project design, the Department considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

b. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population and other identified needs and the quality of the applicant's plans for recruiting and retaining the target population;

c. The extent to which the design of the proposed project provides procedures and approaches for collaboration and coordination with key agencies and organizations, identification of critical roles, and a plan for implementation of competitive, customized community employment strategies;

d. The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant and the quality of the applicant's plans for implementing the project's activities in years four and five when Federal fending will be reduced;

e. The extent to which the proposed project will be coordinated, including demonstrated support from the state governor or designated Olmstead agency and commitment from key organizations, employers, and agencies;

f. The extent to which the applicant encourages involvement of people with disabilities and their families, experts and organizations, and other relevant stakeholders in project activities; and,

g. The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

3. Quality of Project Personnel (15 points)

The Project Narrative must describe the proposed staffing of the project and must identify and summarize the qualifications of the personnel who will carry it out. In addition, the Project Narrative must summarize the qualifications, including relevant education, training and experience of key project personnel as well as the qualifications, including relevant training and experience of project consultants or subcontractors. Resumes must be included in the Appendices.

4. Adequacy of the Budget (10 points)

In evaluating the adequacy of the budget for the proposed project, the Department considers the following factors:

a. The extent to which the budget is adequate to support and sustain the proposed project activities over the projected five-year period; and,

b. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

The applicant may include letters of commitment from proposed partners in the Appendix.

5. Quality of the Management Plan (15 points)

In evaluating the quality of the management plan for the proposed project, the Department considers the following factors:

a. The extent to which the management plan for project implementation achieves the objectives of the proposed project on time and within budget, including clearly defined staff responsibilities, and time allocated to project activities, time lines, milestones for accomplishing project tasks and project deliverables;

b. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and,

c. The extent to which the time commitments of the project director and/or principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

6. Quality of the Project Evaluation (10 points)

In evaluating the quality of the project's evaluation design, the Department considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, context, and outcomes of the proposed project;

b. The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

c. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

d. The extent to which the evaluation will provide information to other programs about effective strategies

suitable for replication or testing in other settings; and,

e. The extent to which the methods of evaluation measure in both quantitative and qualitative terms, program results and satisfaction of people with disabilities.

B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements, and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require, that all procurement transactions shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., to avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

1. Findings of the grant technical evaluation panel
2. Geographic distribution of the competitive applications;
3. Assuring a variety of program designs; and,
4. The availability of funds.

*H. Reporting for Workforce Action Grants*

The Department of Labor is responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement, the grant agreement, and other applicable administrative requirements. Applicants should assume that DOL staff or their designees will conduct at least one on-site project review. In addition, all grantees will be expected to provide information on individuals with disabilities securing employment through use of customized strategies (including information on types of jobs, wages, and benefits secured by specific individuals with disabilities, and other areas addressed through the linkages and networks facilitated by project activities).

Grantees will be required to submit periodic financial and participation reports. Specifically the following reports will be required:

1. Quarterly reports; The quarterly report is estimated to take ten hours to complete. The form for the Quarterly Report will be provided by ODEP. The Department will work with the grantee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction.
2. Standard Form 269; Financial Status Report Form, on a quarterly basis.
3. Final Project Report; including an assessment of project performance and outcomes achieved. The final report is estimated to take 20 hours. This report will be submitted in hard copy and on electronic disk using a format and following instructions, which will be provided by the Department. A draft of the final report is due to the Department 45 days before the termination of the grant. The final report is due to the Department 60 days following the termination of the grant

DOL will arrange for and conduct an independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Grantees must agree to make available records on all parts of project activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the Department. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the grantee for project implementation.

*I. Administration Provisions (Applicable to Both SGAs)*

A. Administrative Standards and Provisions

1. The WorkFORCE Coordinating Grants awarded under this SGA are subject to the following:

- 29 CFR Part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR Part 96—Audit Requirements for Grants, Contracts and Other Agreements;
- 29 CFR Part 97 '' Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments

2. The WorkFORCE Action Grants awarded under this SGA shall be subject to the following:

- 29 CFR Part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR Part 96—Audit Requirements for Grants, Contracts, and Other Agreements.

B. Allowable Costs

Determinations of allowable costs for both the WorkFORCE Coordinating and Action Grants shall be made in accordance with the following applicable Federal cost principles:

- Nonprofit Organizations—OMB Circular A–122
- State and Local Government—OMB Circular A–87

Profit will not be considered an allowable cost in any case.

C. Grant Non-Discrimination Assurances

As a condition of the awards, applicants for both the WorkFORCE Coordinating and Action Grants must certify that they will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

29 CFR Part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964.

29 CFR Part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance. (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794)

29 CFR Part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.)

29 CFR Part 37—Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA), (Implementing Section 188 of the Workforce Investment Act, 29 U.S.C. 2938)

The applicant must include assurances and certifications that it will comply with these laws in its grant application. The assurances and certifications are attached as Appendix C.

Signed at Washington, DC this 16th day of July, 2002.

**Lawrence J. Kuss,**

*Grant Officer.*

Appendix A. Application for Federal Assistance, Form SF 424

Appendix B. Budget Information Sheet, Form SF 424A

Appendix C. Assurances and Certifications

Signature Page

BILLING CODE 4510–CX–P

## APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

| | | | |
|---|---|---|---|
| | | 2. DATE SUBMITTED: July 16, 2002 | Applicant Identifier |
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction | | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, State, and zip code):* | Name and telephone number of person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER** *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify):*

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**

☐☐ – ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.):*

| 13. PROPOSED PROJECT | | 14. CONGRESSIONAL DISTRICTS OF: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |

**15. ESTIMATED FUNDING:**

| | | **16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?** |
|---|---|---|
| a. Federal | $ .00 | a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ |
| b. Applicant | $ .00 | |
| c. State | $ .00 | |
| d. Local | $ .00 | |
| e. Other | $ .00 | b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW |
| f. Program Income | $ .00 | **17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** |
| g. TOTAL | $ 0 .00 | ☐ Yes If "Yes," attach an explanation. ☐ No |

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| a. Type Name of Authorized Representative | b. Title | c. Telephone Number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>-- "New" means a new assistance award.<br>-- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>-- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

## BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ 0.00 |
| 2. | | | | | | 0.00 |
| 3. | | | | | | 0.00 |
| 4. | | | | | | 0.00 |
| 5. Totals | | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ 0.00 |
| b. Fringe Benefits | | | | | 0.00 |
| c. Travel | | | | | 0.00 |
| d. Equipment | | | | | 0.00 |
| e. Supplies | | | | | 0.00 |
| f. Contractual | | | | | 0.00 |
| g. Construction | | | | | 0.00 |
| h. Other | | | | | 0.00 |
| i. Total Direct Charges *(sum of 6a-6h)* | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| j. Indirect Charges | | | | | 0.00 |
| k. TOTALS *(sum of 6i and 6j)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |
| 7. Program Income | $ | $ | $ | $ | $ 0.00 |

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ 0.00 |
| 9. | | | | 0.00 |
| 10. | | | | 0.00 |
| 11. | | | | 0.00 |
| 12. TOTAL *(sum of lines 8-11)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ 0.00 | $ | $ | $ | $ |
| 14. Non-Federal | 0.00 | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ 0.00 | $ 0.00 | $ 0.00 | $ 0.00 |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

## ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions and Certifications Regarding Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

D. Applicant is not a 501 (c) (4) organization

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

**Please Note: This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

[FR Doc. 02–18424 Filed 7–19–02; 8:45 am]
BILLING CODE 4510–CX–C

## 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 July, 2002.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations for Worker Adjustment Assistance**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–41,248; NAS Interplex, Inc., Flushing, NY*

*TA–W–41,183; Alcoa Lebanon Works, A Div. Of Alcoa, Inc., Lebanon, 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–41,393; Transylvania Vocational Services (TVS), Inc., Brevard, NC*

*TA–W–41,206; ICF Industries, Inc., Edison, NJ*

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA–W–40,576; Jones Apparel Group USA, Inc., Bristol, PA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–40,016 & A, B; Schott Corp., Marshall, MN, Minneota, MN and Canby, MN*

*TA–W–41,238; Keystone Thermistor Corp., Mt. Jewett, PA*

*TA–W–41,301; Schlumbergersema, Inc., San Carlos, CA*

*TA–W–41,294; Northwind Outdoor Co., Overton's, Inc., Fergus Falls, MN*

*TA–W–41,475; Ruger Equipment, Inc., Urichsville, OH*

**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–41,342; American Furniture Co., Chilhowie, VA: March 20, 2001.*

*TA–W–41,407; Leviton Manufacturing Co., Inc., El Paso Operations, El Paso, TX: April 10, 2001.*

*TA–W–41,461; Renfro Corp., South Pittsburg, TN: April 8, 2001.*

*TA–W–41,262; Alexander Garments, Inc., Hialeah, FL: February 15, 2001.*

*TA–W–41,063; Lakemont Manufacturing Co., Inc., Lakemont, GA: January 24, 2001.*

*TA–W–41,473; Mount Vernon Mills, Inc., Alto Yarn Division, Alto, GA: April 12, 2001.*

*TA–W–41,232; Presto Lifts, Inc., Pawtucket, RI: March 25, 2001.*

*TA–W–41,234 & A; Spring Ford Industries, Spindale, NC and Rutherfordton, NC: March 20, 2001.*

*TA–W–41,466; Execumold, Inc., (Currently Located at Fairview, Pennsylvania), Erie, PA: February 21, 2001.*

*TA–W–41,472; Deerter's Tool and Manufacturing, Inc., Erie, PA: March 28, 2001.*

*TA–W–41,066; Guilford Mills, Inc., Twin Rivers Textile, Schenectady, NY: February 6, 2001.*

*TA–W–41,214; Gem-Dandy, Inc., Madison, NC: February 22, 2001.*

*TA–W–41,219; Spring Ford Industries, Gastonia, NC: March 22, 2001.*

*TA–W–41,220; Spring Ford Industries, Chilhowie, VA: January 20, 2002.*

*TA–W–41,226; Emerson Tool Co., Menominee, MI: March 21, 2001.*

*TA–W–41,535; Sights Denim Systems, Inc., Henderson, KY: May 6, 2001.*

*TA–W–41,476; Warnaco, Inc., Calvin Klein Div., Abbeville, NC: April 10, 2001.*

*TA–W–41,397; American Fashion, Inc., Chula Vista, CA: March 26, 2001.*

*TA–W–40,311; Quickie Manufacturing Corp., El Paso, TX: February 15, 2001.*

*TA–W–41,470; Milco Industries, Inc., Bloomsburg, PA: April 28, 2002.*

*TA–W–39,136; Western Electronics, Eugene Div., Eugene, OR: April 6, 2000.*

*TA–W–41,454; K and J Clothing, Inc., Philadelphia, PA: March 29, 2001.*

*TA–W–41,471; Cummins, Inc., Cummins Power Generation, Fridley, MN: April 8, 2001.*

*TA–W–41,296; Mullican Lumber Co., LP, Appalachia, VA: March 28, 2001.*

*TA–W–41,426 & A; Fairbrooke Enterprises, Inc., Carlstadt, NJ and New York, NY: April 8, 2001.*

*TA–W–41,377; Levi Strauss & Co., San Francisco Manufacturing Plant, San Francisco, CA, A; Blue Ridge Manufacturing Plant, Blue Ridge, GA, B; Powell Manufacturing Plant, Powell, TN, C; Brownsville Manufacturing Plant, Brownsville, TX, D; Kastrin Manufacturing Plant, El Paso, TX, E; San Benito Manufacturing Plant, San Benito, TX, G; Little Rock Customer Service Center, Little Rock, AR, H; Hebron Customer Service Center, Hebron, KY, I; Sky Harbor Customer Service Center, Henderson, NE, J; Canton Customer Service Center, Canton, MS, K; CF Regional Dallas Office, Dallas, TX, L; Westlake Data Center, Westlake, TX, M; San Francisco Headquarters, San Francisco, CA, N; Oak Road Office, Walnut Creek, CA: April 11, 2001.*

*TA–W–40,995; Bosch Rexroth Corp., Industrial Hydraulics Div., Racine, WI: March 11, 2001.*

*TA–W–41,098; Marathon Electric, Inc., A Subsidiary of Regal-Beloit Corp., Wausau, WI: February 13, 2001.*

*TA–W–41,002; Flextronics Enclosures Systems, Inc., Kingston, PA: January 11, 2001.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), 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 months of July, 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 increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determinations NAFTA–TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

*NAFTA–TAA–05999; Flextronics Enclosures Systems, Inc., Kingston, PA*

*NAFTA–TAA–06018; Johnson Controls International, Fullerton, CA*

*NAFTA–TAA–06138; Milco Industries, Inc., Apparel Div., Bloomsburg, PA*

*NAFTA–TAA–06169; Schlumbergersema, Inc., San Carlos, CA*

*NAFTA–TAA–06219; Pillowtex Corp., Phenix City Facility Finishing and Weave and Columbus Towel Greige, Phenix City, AL*

*NAFTA–TAA–06128; Deeter's Tool and Manufacturing, Inc., Erie, PA*

*NAFTA–TAA–06059; New Images, Inc., Reidsville, NC*

*NAFTA–TAA–06050; NAS Interplex, Inc., Flushing, NY*

*NAFTA–TAA–05987; Alcoa Lebanon Works, A Div. Of Alcoa, Inc., Lebanon, PA*

*NAFTA–TAA–05959; Gem-Dandy, Inc., Madison, NC*

*NAFTA–TAA–05758; Bosch Rexroth Corp., Industrial Hydraulics Div., Racine, WI*

*NAFTA–TAA–05738; Drexel Heritage Furnishings, Inc., Plant Number 1, Drexel, NC*

*NAFTA–TAA–05227; Union Apparel, Inc., Norvelt, PA*

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

*NAFTA–TAA–06034; Alcatel USA, Repair/Returns, Ogdensburg, NY*

*NAFTA–TAA–06174; Transylvania Vocational Services, (TVS), Inc., Brevard, NC*

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*NAFTA–TAA–5604; Jones Apparel Group USA, Inc., Bristol, PA*

*NAFTA–TAA–05659; Liz Claiborne, Inc., Mt. Pocono, PA*

*Affirmative Determinations NAFTA–TAA*

*NAFTA–TAA–06134; Keystone Termistor Corp., Mt. Jewett, PA: April 1, 2001.*

*NAFTA–TAA–06200; ASCO Power Technologies, LP, Firetrol, Including Leased Workers of Onsite Companies, Cary, NC: May 10, 2001.*

*NAFTA–TAA–06105; Warnaco, Inc., Calivin Klein Div., Abbeville, SC: April 12, 2001.*

*NAFTA–TAA–06098; Leviton Manufacturing Co., Inc., El Paso Operations, El Paso, TX: March 28, 2001.*

*NAFTA–TAA–06095; Levi Strauss & Co., San Francisco Manufacturing Plant, San Francisco, CA, A; Blue Ridge Manufacturing Plant, Blue Ridge, GA, B; Powell Manufacturing Plant, Powell, TN, C; Brownsville Manufacturing Plant, Brownsville, TX, D; Kastrin Manufacturing Plant, El Paso, TX, E; San Antonio Finishing Plant, San Antonio, TX, F; San Benito Manufacturing Plant, San Benito, TX, G; Little Rock Customer Service Center, Little Rock, AR, H; Hebron Customer Service Center, Hebron, KY, I; Sky Harbor Customer Service Center, Henderson, NE, J; Canton Customer Service Center, Canton, MS, K; CF Regional Dallas Office, Dallas, TX, L; Westlake Data Center, Westlake, TX, M; San Francisco Headquarters, San Francisco, CA, N; Oak Road Office, Walnut Creek, CA: April 11, 2001.*

*NAFTA–TAA–04751; Western Electronics, Eugene Div., Eugene, OR: April 6, 2000.*

*NAFTA–TAA–05061; Great Lakes Stitchery, Inc., Manistee, MI: July 10, 2000.*

*NAFTA–TAA–06042; American Fashion, Inc., Chula Vista, CA: March 21, 2001.*

*NAFTA–TAA–05881; Marathon Electric, Inc., A Subsidiary of Regal-Beloit Corp., Wausau, WI: February 19, 2001.*

*NAFTA–TAA–6232; West Penn Hat and Cap Corp., Creighton, PA: May 14, 2001.*

*NAFTA–TAA–06115; Garlock Sealing Technologies, A Div. Of B.F. Goodrich, Sodus Facility, Palmyra, NY: October 2, 2000.*

*NAFTA–TAA–6101; Mount Vernon Mills, Inc., Alto Yarn Div., Alto, GA: April 12, 2001.*

*NAFTA–TAA–05995; Emerson Tool Co., Menominee, MI: March 21, 2001.*

*NAFTA–TAA–05993; Spring Ford Industries, Rutherfordton, NC: March 20, 2001.*

*NAFTA–TAA–05992; Spring Ford Industries, Gastonia, NC: March 22, 2001.*

*NAFTA–TAA–05971; Spring Ford Industries, Spindale, NC: March 14, 2001.*

*NAFTA–TAA–06163; Sights Denim Systems, Inc., Henderson, KY: May 6, 2001.*

I hereby certify that the aforementioned determinations were issued during the months of July, 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: July 12, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18420 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–40,915 & NAFTA–5701]**

### Trend Technologies, Round Rock, TX; Notice of Determination on Reconsideration

By application dated May 16, 2002, a petitioner requested administrative reconsideration of the Department's negative determinations regarding eligibility to apply for TAA (TA–W–40,915) and NAFTA–TAA (NAFTA–

5701) applicable to workers and former workers of the subject firm. The denial notices were signed on April 22, 2002 and May 3, 2002, respectively and published in the **Federal Register** on May 2, 2002 (67 FR 22113) and May 17, 2002 (67 FR 35142), respectively.

The initial TAA and NAFTA–TAA petition investigations for workers at Trend Technologies, Round Rock, Texas (TA–W–40,915 & NAFTA–5701) were denied based on the finding that sales and production at the subject firm did not decline during the relevant period.

The petitioner alleged that shifts in subject plant production occurred and supplied various shipping invoices depicting shifts in plant machinery to Guadalajara, Mexico during the relevant period.

A review of the data furnished by the petitioner and further clarification from the company shows that a meaningful portion of subject plant production was shifted to Mexico during the relevant period. The products produced in Mexico by Trend Technologies are then sold to their customer located in Mexico. The subject plant products are not imported back to the United States, but incorporated into the customers' computer products.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers at Trend Technologies, Round Rock, Texas (NAFTA–05701), who became totally or partially separated from employment on or after December 30, 2000, through two years from the date of certification, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974,

and

I affirm the original notice of negative determination of eligibility to apply for TAA under Section 223 of the Trade Act of 1974 for workers and former workers of Trend Technologies, Round Rock, Texas (TA–W–40,915).

Signed in Washington, DC this 17th day of June 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18418 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–39,471]**

## Besser Company, Alpena, MI; Notice of Revised Determination on Reconsideration

On April 26, 2002, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 4, 2002 (67 FR 38523).

The Department initially denied TAA to workers of Besser Company, Alpena, Michigan engaged in the production of concrete machinery and equipment because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted a sample survey of additional major customers of the subject firm regarding their purchases of concrete machinery and equipment during the relevant period. The survey revealed that some customers increased their reliance on imported concrete machinery and equipment during the 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 concrete equipment and machinery, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Besser Company, Alpena, Michigan. In accordance with the provisions of the Act, I make the following certification:

All workers of Besser Company, Alpena, Michigan engaged in the production of concrete machinery and equipment who became totally or partially separated from employment on or after May 29, 2000 through two years from date of certification are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 12th day of July, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18413 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–40,492]**

## Coastal Lumber Company, Suffolk, VA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 4, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on May 6, 2002, and published in the **Federal Register** on May 17, 2002 (67 FR 35340).

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 misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Coastal Lumber Company, located in Suffolk, Virginia was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their imports of pine boards while decreasing their purchases from the subject firm during the relevant period.

The petitioner supplied statistics relating to softwood lumber imports for selected countries. The petitioner believes these countries are importing pine boards back to the United States and that the declines in the price of softwood lumber created a surge in imports of softwood lumber during the relevant period, thus impacting the subject plant workers and the softwood lumber industry.

A review of the data supplied by the petitioner depicts the trend in softwood lumber imports for selected countries during the relevant period. However, the softwood lumber statistics supplied by the petitioner is a broad (basket) category and is not specific enough with

the products produced (pine board) by the subject plant and therefore not relevant. The Department conducted a survey, as already indicated, to examine the direct impact of pine board imports on the subject firm worker's during the relevant period. The survey revealed that customer imports did not contribute importantly to the layoffs at the subject plant during the relevant period.

Further, the price of imported softwood lumber is not a relevant factor in meeting the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 3rd day of July 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18416 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–39,987]**

### GSI Lumonics Corp., Maple Grove, MN; Notice of Revised Determination on Reconsideration

By letter of January 9, 2002, an employee 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 December 17, 2001, based on the finding that imports did not contribute importantly to the layoffs at the subject plant. The denial notice was published in the **Federal Register** on January 11, 2002 (67 FR 1509).

The request for reconsideration is based on the allegation that specific products produced at the subject plant were shifted to Canada and England, and a meaningful portion of those products were imported back to the United States.

The Department on further review of the investigation and further contact with the company received new information revealing that shifts in plant production (SVS & Silver Cutting Head) to foreign sources occurred during the relevant period. A meaningful portion of that production shifted to foreign sources was imported back to the United States during the 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 GSI Lumonics, Inc., Maple Grove, Minnesota 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 GSI Lumonics, Inc., Maple Grove, Minnesota who became totally or partially separated from employment on or after August 21, 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 14th day of June, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18414 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–40,732]**

### LM Services, Cumberland, Maryland; 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 LM Services, Cumberland, Maryland. 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–40,732; LM Services
Cumberland, Maryland (June 24, 2002)

Signed at Washington, DC this 12th day of July, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18417 Filed 7–19–02; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–40,343]**

### Specialty Minerals (Michigan), Inc., Plainwell, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 13, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 24, 2002, and published in the **Federal Register** on May 2, 2002 (67 FR 22112).

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 misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Specialty Minerals (Michigan), Inc., Plainwell, Michigan was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended; was not met. The denial was based on evidence indicating that customers of the subject firm do not import precipitated calcium carbonate. The subject firm did not import precipitated calcium carbonate.

The company feels that the eligibility criteria were met based on the fact that the subject plant existed to supply the key raw material (precipitated calcium carbonate) to the major customer. The company further states that once the customer closed down, due to imported paper, the subject plant no longer had a customer and as a result was directly impacted by imported paper closing it's primary customer.

The imports of any other product by the company or customer is not relevant to this petition that was filed on behalf of worker(s) producing precipitated calcium carbonate. The products imported must be ''like or directly competitive'' with what the subject plant produces to meet the eligibility requirements of section 222(3) of the Trade Act of 1974, as amended.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 14th day of June 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18415 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–41,142]**

### SPX Valves and Controls, Lake City, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application received on May 31, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of SPX Valves and Controls, Lake City, Pennsylvania was issued on May 13, 2002, and will soon be published in the **Federal Register**.

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 misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings revealed that criterion (2) of the group eligibility requirements of section 222 of the Trade Act of 1974 was not met. Subject firm sales and production of valves increased from 2000 to 2001 and further increased from the January through March 2002 period over the corresponding 2001 period. The workers were engaged in the production of valves.

The request for reconsideration alleges that sales and production although increasing at the subject plant will begin to decline during the third or fourth quarter of 2002. The company further states that the company started importing valve parts (valve bonnets, bodies, actuators and positioners) from foreign sources during January 2002 and has purchase orders to import a meaningful amount of valves during the remainder of the year.

The company request for reconsideration corresponds to the TAA denial which was based on criterion (2) not being met, plant sales and production did not decline during the relevant period.

Imports of valve parts cannot be considered in meeting criterion (3) group eligibility requirements of Section 222 of the Trade Act of 1974. The reported importation of component parts beginning in January 2002 is not a relevant factor for workers producing valves. The imported product must be like or directly competitive with what the subject firm workers produce (valves).

The petitioner further states that sales and production will decline later this year and also appears to be stating that the company has ordered foreign produced valves which will be imported into the United States in the near future and continue to be imported through the remainder of 2002. If conditions change at the subject firm, the workers are encouraged to reapply for TAA eligibility.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC., this 18th day of June, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18419 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Collection; Comment Request; Correction

**AGENCY:** Employment and Training Administration, USDOL.

**ACTION:** Correction.

**SUMMARY:** In notice document 02–17599 beginning on page 46214 in the issue of Friday, July 12, 2002, make the following corrections:

On page 46214 in the third column, insert ''*Agency:* Employment and Training Administration'' after ''*Type of Review:* Extension with change'' where ''*Type of Review:* Extension without change'' first appears.

On page 46214 in the third column, insert ''*Title:* Employment Service Complaint Referral'' in the seventh line just before the word ''Record.'' Thus, the beginning of line seven should read as ''*Title:* Employment Service Complaint Referral Record, ETA 8429 and the Services to * * *''

Dated: July 15, 2002.

**Grace A. Kilbane,**

*Administrator, Office of Workforce Security.*

[FR Doc. 02–18412 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–05755]**

### Delphi Automotive Systems Corporation, Delphi Delco Electronics Division, Body and Security Team, Oak Creek, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 10, 2002, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA—TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 16, 2002, and was published in the **Federal Register** on May 2, 2002 (67 FR 22115).

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 misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers performing engineering design work at Delphi Automotive Systems Corporation, Delphi Electronics Division, Body and Security Team, Oak Creek, Wisconsin was based on the finding that the workers do not produce an article as required for certification under Section 250(a) of the Trade Act of 1974, as amended.

The petitioners allege that the workers produce a product (prototypes) and that work performed by the subject firm workers was shifted to Mexico.

Review of the investigation shows that subject workers were engaged in engineering design work. Workers at the subject site were also engaged in minor modifications of prototypes that were built at another affiliated domestic facility and then transferred to the subject plant. The engineering design work was shifted to Mexico, no functions relating to minor modifications to the prototypes were shifted to Mexico. The Mexican site is strictly engineering focused, no prototype production is being performed there. The engineering design activities that were shifted to Mexico are service functions only. No subject plant production was shifted to Mexico. Therefore, the workers at the subject firm do not meet the eligibility requirements under section 250 of the Trade Act of 1974.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of June, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18421 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–5866]**

### Exide Technologies Transportation Business Group Florence, MS; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 13, 2002, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 11, 2002, and was published in the **Federal Register** on April 24, 2002 (67 FR 20167).

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 misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of SLI batteries at Exide Technologies, Transportation Business Group, Florence was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no company imports of SLI batteries from Mexico or Canada, nor did the subject firm shift production from Florence, Mississippi to Mexico or Canada. The survey conducted by the Department of Labor revealed no increase in customer purchases of SLI batteries from Canada or Mexico during the period.

The petitioner alleges that a major competitor is expanding their production facility in Mexico.

The expansion of a major competitor's Mexican facility producing SLI batteries is not relevant to meeting the eligibility requirements for adjustment assistance under section 250(a) of the Trade Act of 1974, as amended.

The petitioner is further concerned that the customers are not buying the batteries directly from the Mexican facility, but purchasing the imported Mexican batteries from domestic sources and thus the Mexican imports may not show up in the Department of Labor's investigation.

The Department of Labor (DOL) survey tests for imported products that are purchased from domestic sources that are like or directly competitive with what the subject plant produces during the relevant period. The DOL survey revealed that none of customers increased their purchases of imported batteries from Canada or Mexico or other domestic sources that may be importing from Canada or Mexico during the relevant period.

On June 5, 2002 the company contacted the Labor Department stating that other Exide Technologies facilities were certified eligible for NAFTA–TAA and that the customer bases of those facilities were similar to subject plant's customer base. Therefore, the company believes that the subject plant should also be certified eligible for NAFTA–TAA based on those certifications.

Examination of previous company wide NAFTA–TAA certifications show that those facilities were certified eligible for NAFTA–TAA based on a major customer increasing their imports of batteries from Mexico during the relevant time period. The subject plant did not sell batteries to that major customer during the relevant time period.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of June 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18425 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–5983]**

### Freightliner LLC, Cleveland Manufacturing Plant, Cleveland, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 8, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 3, 2002, and was published in the **Federal Register** on April 17, 2002 (67 FR 18924).

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 misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of Class 8 heavy-duty trucks at Freightliner LLC, Cleveland Truck Manufacturing Plant, Cleveland, North Carolina was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no increased company imports of Class 8 heavy-duty trucks from Mexico or Canada, nor did the subject firm shift production from Cleveland, North Carolina to Mexico or Canada. The survey conducted by the Department of Labor revealed that customer purchases of Class 8 heavy-duty trucks from Canada or Mexico were negligible during the relevant period.

The petitioner appears to be alleging that the layoffs that occurred from July 2000 through October 2000 were the result of shifts in production to Mexico by their parent, Freightliner LLC, Portland, Oregon producing trucks and parts and a sister plant Freightliner LLC Truck Manufacturing, Mt. Holly, North Carolina producing parts used at the Cleveland plant, caused a decrease in production at the subject plant.

The subject plant layoffs that occurred during July 2000 through October 2000 period are beyond the relevant period. In accordance with Section 250 of the Act, no certification may apply to any worker whose last total or partial separation from the subject firm occurred one year prior to the date of the petition. The layoffs were more than one year prior to the date of the petition (March 12, 2002). Therefore, the declines in plant production and employment during the July 2000 through October 2000 period are not relevant.

The petitioner also indicates that a meaningful portion of the subject plants' production declines were caused by an indirect affect of an increasing number of companies either closing throughout the United States or shifting their production to Mexico, thus reducing the demand for Freightliner Class 8 Trucks and causing the layoffs at the subject firm.

Customers shifting their production to Mexico or going out of business are not relevant factors in meeting the eligibility requirement of section 250 of the Trade Act.

The petitioner further states that they should be certified for NAFTA–TAA since the Portland and Mt. Holly facilities were certified eligible for NAFTA–TAA.

A review of the two NAFTA–TAA certifications pertaining to the Portland (NAFTA–4636) and Mt. Holly (NAFTA–4550) plants were based on some products produced by those two plants being shifted to Mexico. In the case of the subject plant, there was no shift in plant production to either Canada or Mexico during the relevant period. To meet the eligibility requirement (criterion 4) of a shift in subject plant production to Canada or Mexico, there must be 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.

The Department of Labor conducted an investigation for the relevant period. The investigation revealed that criteria (3) and (4) were not met as depicted in the initial decision.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 14th day of June, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18422 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA—006260]**

### GretagMacbeth, New Windsor, NY; Notice of Termination of Investigation

Pursuant to Title V of the North American Free TradeAgreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 18, 2002, in response to a petition filed on behalf of workers at GretagMacbeth, New Windsor, New York. Workers were engaged in the production of color quality and control instruments.

During the investigation it was discovered that the petition was a duplicate of the petition filed on April 18, 2002 that resulted in a negative determination (NAFTA–006109). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of July, 2002.

**Edward A. Tomchick,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18427 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–5998]**

### Ibiden Graphite Of America Corporation, Portland, Oregon; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked May 29, 2002, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers

and former workers of the subject firm. The denial notice was signed on May 3, 2002, and was published in the **Federal Register** on May 17, 2002 (67 FR 35142).

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 misinterpretation of facts or of the law justified reconsideration of the decision.

The denial of NAFTA–TAA for workers engaged in activities related to the production of carbon graphite machined products and raw graphite materials at Ibiden Graphite of America Corporation, Portland, Oregon was based on the finding that criteria (3) and (4) of the group eligibility requirements of paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no company imports of carbon graphite machined products and raw graphite materials from Mexico or Canada, nor did the subject firm shift production from Portland, Oregon to Mexico or Canada. The survey conducted by the Department of Labor revealed no imports of carbon graphite machined products and raw graphite materials from Canada or Mexico during the relevant period.

The petitioner appears to be alleging that the production performed by the subject firm is now being sent to a facility located in Boston, Massachusetts, who then send most of that work to Japan.

The alleged shifts in production to a foreign source other than Canada or Mexico or the imports from a foreign source other than Canada or Mexico are not relevant factors in meeting the eligibility requirements for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Of note, on June 28, 2002 the workers were certified eligible to apply for Trade Adjustment Assistance under TA–W–41,424.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 12th day of July 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18426 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6286]**

### Joy Mining Machinery, Mt. Vernon, IL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 12, 2002, in response to a petition filed by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 483, on behalf of workers at Joy Mining Machinery, Mt. Vernon, Illinois (NAFTA–6286).

The date of the petition is June 3, 2002, however, the employees in question were terminated from employment November 24, 2000. Thus, all workers were separated from the subject firm more than one year prior to the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year prior to the date of the petition.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of July, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18428 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–6322]**

### Whisper Jet, Inc., Sanford, FL; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on June 20, 2002, in response to a petition filed on behalf of workers at Whisper Jet, Inc., Sanford, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of July, 2002.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 02–18429 Filed 7–19–02; 8:45 am]

**BILLING CODE 4510–30–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act; Notice of Meeting

**TIME AND DATE:** 10 a.m. Thursday, July 25, 2002.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Quarterly Insurance Fund Report.
2. Reprogramming of NCUA's Operating Budget for 2002.
3. Request from a Federal Credit Union to Convert to a Community Charter.

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

**Sheila Albin,**

*Acting Secretary of the Board.*

[FR Doc. 02–18568 Filed 7–18–02; 1:13 pm]

**BILLING CODE 7535–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–282 and 50–306]**

### Nuclear Management Company, LLC; Prairie Island Nuclear Generating Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. DPR–42 and DPR–60, issued to Nuclear Management Company, LLC (the licensee) for

operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota. Pursuant to title 10 of the Code of Federal Regulations (10 CFR) sections 51.21 and 51.32, the NRC is issuing this environmental assessment and finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would be a full conversion from the current technical specifications (CTS) to a set of improved technical specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. The proposed action is in accordance with the licensee's application dated December 11, 2000, as supplemented by letters dated March 6, July 3, August 13, November 12, and December 12, 2001, and January 25, January 31, February 14, February 15, February 16, March 6, April 11, May 10, May 30, June 7, June 25, and June 28, 2002.

*The Need for the Proposed Action*

The Commission's ''Proposed Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (52 FR 3788), dated February 6, 1987, contained an Interim Policy Statement that set forth objective criteria for determining which regulatory requirements and operating restrictions should be included in the technical specifications (TS). When it issued the Interim Policy Statement, the Commission also requested comments on it. Subsequently, to implement the Interim Policy Statement, each reactor vendor owners group and the NRC staff began developing standard TS (STS) for reactors supplied by each vendor. The Commission then published its ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors'' (58 FR 39132), dated July 22, 1993, in which it addressed comments received on the Interim Policy Statement, and incorporated experience in developing the STS. The Final Policy Statement formed the basis for a revision to 10 CFR 50.36 (60 FR 36953), dated July 19, 1995, that codified the criteria for determining the content of TS. The NRC Committee to Review Generic Requirements reviewed the STS, made note of their safety merits, and indicated its support of conversion by operating plants to the STS. For the Prairie Island Nuclear Generating Plant, Units 1 and 2, the STS are NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. This document formed the basis for the Prairie Island Nuclear Generating Plant, Units 1 and 2, conversion.

The proposed changes to the CTS are based on NUREG–1431 and guidance provided in the Final Policy Statement. The objective of this action is to completely rewrite, reformat, and streamline the CTS (i.e., to convert the CTS to ITS). Emphasis was placed on human factors principles to improve clarity and understanding. The Bases section has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the CTS were also used as the basis for the development of the Prairie Island Nuclear Generating Plant, Units 1 and 2 ITS. Plant-specific issues (i.e., unique design features, requirements, and operating practices) were discussed at length with the licensee.

The proposed changes from the CTS can be categorized into five general groupings. These groupings are characterized as administrative changes, more restrictive changes, less restrictive changes, less restrictive relocated details, and relocated specifications. Administrative changes include those changes that are editorial in nature or involve the reorganization or reformatting of CTS requirements without affecting technical content or operational restrictions.

More restrictive changes include those changes that result in added restrictions or reduced flexibility. The licensee, in electing to implement the specifications of the STS, proposed a number of requirements more restrictive than those in the CTS. The ITS requirements in this category include requirements that are either new, more conservative than corresponding requirements in the CTS, or have additional restrictions that are not in the CTS but are in the STS.

Less restrictive changes include deletions and relaxations to portions of the CTS in order to conform to the guidance of NUREG–1431, which would result in reduced restrictions or added flexibility. When requirements have been shown to provide little or no safety benefit, their relaxation or removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (1) generic NRC actions, (2) new staff positions that have evolved from technological advancements and operating experience, or (3) resolution of the Owner's Groups' comments on STS.

Less restrictive relocated details include those changes to the CTS that eliminate details and relocate the details to licensee-controlled documents. Typically, this involves details of system designs, system descriptions including design limits, descriptions of system or plant operation, procedural details for meeting TS requirements and relocated reporting requirements, and redundant requirement references.

Relocated specifications include those changes to the CTS that relocate certain requirements which do not meet the 10 CFR 50.36 selection criteria. These requirements may be relocated to the Bases, updated safety analysis report, core operating limits report (COLR), operational quality assurance plan, plant procedures, or other licensee-controlled documents. Relocating requirements to licensee-controlled documents does not eliminate them, but rather, places them under more appropriate regulatory controls (*i.e.,* 10 CFR 50.54(a)(3), and 10 CFR 50.59) to manage their implementation and future changes.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are (1) different from the requirements in both the CTS and the STS and, (2) in addition to those changes that are needed to meet the overall purpose of the conversion. These changes are referred to as beyond-scope changes and include:

1. Extension of the certain surveillance interval from 18 months to 24 months to support the proposed refueling cycle of 24 months;

2. Extension of the allowed outage time for the emergency core cooling system accumulators from 1 to 24 hours;

3. Missed surveillance consolidated line item improvement to extend the delay period for a missed surveillance requirement from the current limit of 24 hours to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater;''

4. Revision to the ventilation filter testing program to incorporate the guidance provided in NRC Generic Letter 99–02, ''Laboratory Testing of Nuclear-Grade Activated Charcoal,'' dated June 3, 1999;

5. A new methodology (to be incorporated by reference into ITS Section 5.0) that describes the method by which the shutdown margin limit during physics testing is established for inclusion within the COLR;

6. A new methodology (to be incorporated by reference to ITS Section 5.0) that describes the method by which a factor, $F_Q^A$, (in support of ITS 3.2.1, Heat Flux Channel Factor) is to be determined; and

7. Plant-specific instrument setpoint methodology in support of new

instrument allowable values and trip setpoints in the ITS.

*Environmental Impacts of the Proposed Action*

The NRC staff has completed its evaluation of the proposed action and concludes that the proposed TS conversion would not increase the probability or consequences of accidents previously analyzed and would not affect facility radiation levels or facility radiological effluents.Specifically, the proposed TS changes will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites because no previously undisturbed area will be affected by the proposed TS changes. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Prairie Island Nuclear Generating Plant, Units 1 and 2, dated May 1973.

*Agencies and Persons Consulted*

On July 8, 2002, the staff consulted with Ms. Linda Bruemmer of Minnesota State Division of Environmental Health regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 11, 2000, as supplemented by letters dated March 6, July 3, August 13, November 12, and December 12, 2001, and January 25, January 31, February 14, February 15, February 16, March 6, April 11, May 10, May 30, June 7, June 25, and June 28, 2002. 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 System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams*''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 e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 15th day of July 2002.

For the Nuclear Regulatory Commission.

**L. Raghavan,**

*Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–18434 Filed 7–19–02; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1099, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1099, ''Anchoring Components and Structural Supports in Concrete,'' is being developed to provide guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the NRC's regulations on the design, evaluation, and quality assurance of anchors (steel embedments) used for component and structural supports on concrete structures.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, ADM, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by October 25, 2002.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC Home Page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *cag@nrc.gov*. For information about Draft Regulatory Guide DG–1099, contact Mr. H.L. Graves at (301)415–5880, e-mail *hlg1@nrc.gov.*

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; e-mail *pdr@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-

mail to *distribution@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 7th day of July, 2002.

For the Nuclear Regulatory Commission.

**Michael E. Mayfield,**

*Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.*

[FR Doc. 02–18435 Filed 7–19–02; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 22–28616]**

## Application and Opportunity for Hearing: Armstrong World Industries, Inc.

July 16, 2002.

The Securities and Exchange Commission gives notice that Armstrong World Industries, Inc. has filed an application under section 310(b)(1)(ii) of the Trust Indenture Act of 1939. Armstrong asks the Commission to find that the trusteeship of Wells Fargo Bank Minnesota, National Association as successor trustee under:

- An indenture dated August 6, 1996, between Armstrong and The Chase Manhattan Bank, a predecessor trustee, with respect to 6.35% Senior Notes due 2003, 6½% Senior Notes due 2005 and 7.45% Senior Quarterly Interest Bonds due 2038, and
- An indenture dated December 23, 1998 between Armstrong and Bank One Trust Company, N.A., a successor trustee, with respect to 7.45% Senior Notes due 2029,

is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Wells Fargo from acting as trustee under both of those indentures.

Section 310(b) of the 1939 Act provides, in part, that if a trustee under an indenture qualified under the Act has or acquires any conflicting interest described in that section, the trustee must, within ninety days after ascertaining that it has a conflicting interest, either eliminate the conflicting interest or resign. Section 310(b)(1) provides, with stated exceptions, that a trustee shall be deemed to have a conflicting interest if the trustee is also a trustee under another indenture under which any other securities of the same obligor are outstanding. However, under Section 310(b)(1)(ii), specified situations are exempt from the deemed conflict of interest under Section 310(b)(1). Section 310(b)(1)(ii) provides, in part, that an indenture to be qualified shall be deemed exempt from section 310(b)(1) if:

> The issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture * * * is not so likely to involve a *material conflict of interest* as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures. * * * Section 310(b)(1)(ii) (emphasis added).

Under this provision, Wells Fargo's trusteeship under the indentures may be excluded from the operation of Section 310(b)(1) if Armstrong sustains the burden of proving, on application to the Commission, that a material conflict of interest is not so likely as to make it necessary in the public interest or for the protection of investors to disqualify Wells Fargo from acting as trustee under either of the indentures.

In its application, Armstrong alleges that:

1. Armstrong issued the 1996 notes and the 1998 notes in registered public offerings in the United States (Registration Statement Nos. 333–6333 and 333–74501), and Armstrong qualified the indentures under the 1939 Act. The securities outstanding under the indentures rank *pari passu* with each other and are wholly unsecured. However, neither indenture references the other indenture.

2. As a result of an Instrument of Resignation, Appointment and Acceptance, dated December 1, 2000, Wells Fargo succeeded Chase as trustee under the 1996 indenture. Under an Instrument of Resignation, Appointment and Acceptance, dated November 12, 2001, Wells Fargo will succeed Bank One as trustee under the 1998 indenture if the Commission grants Armstrong's application.

3. As of the date of Armstrong's application, Armstrong is in default under the indentures due to its filing of a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code on December 6, 2000. The commencement of a voluntary case under the U.S. Bankruptcy Code constituted an event of default under section 5.1(6) of the 1996 indenture and Section 501(5) of the 1998 indenture. Thus, Armstrong is in default under both of the indentures.

4. Had the 1998 indenture contained a specific description of the 1996 indenture, no conflict of interest would be deemed to exist under section 310(b)(1)(i) of the 1939 Act, and the application would not be required. Section 310(b)(1)(i) exempts an indenture from the provisions of Section 310(b) ''if the indenture to be qualified and any such other indenture or indentures * * * are wholly unsecured and rank equally, and such other indenture or indentures * * * are specifically described in the indenture to be qualified or are thereafter qualified.'' The Section 310(b)(i) issue arises only because the 1998 indenture does not refer to the 1996 indenture. Armstrong asserts that this technical omission does not create a risk of material conflict between the two indentures where none otherwise exists.

5. Armstrong asserts that because the securities outstanding under the two indentures rank equally with one another in right of payment and are wholly unsecured, it is highly unlikely that Wells Fargo would ever be subject to a conflict of interest with respect to issues relating to the priority of payment. Wells Fargo would neither be in a position, nor required by the terms of either indenture, to assert that securities outstanding under one indenture are entitled to payment prior to payment of claims under the other indenture.

6. Further, the indentures contain almost identical default and remedy provisions. *See* Section 5 of the 1996 indenture and *Article Five* of the 1998 indenture. Armstrong asserts that it is highly unlikely as a practical matter that Wells Fargo will find itself in a position of proceeding against Armstrong for a default under one indenture but not under the other indenture.

7. Armstrong asserts that it is in the best interest of Armstrong and the holders of the securities under the indentures that Wells Fargo serves simultaneously as trustee under both indentures. Bank One will be required to resign as trustee under the 1998 indenture because of Bank One's concurrent status as a creditor of Armstrong. Wells Fargo is not, except as indenture trustee, a creditor of Armstrong and has no business relationship with Armstrong other than under the 1996 indenture. Wells Fargo's trusteeship also will allow Armstrong to avoid the significant duplicative costs associated with having two separate trustees and their respective separate professionals.

Apart from granting relief under section 310(b)(1)(ii) of the 1939 Act, the Commission may invoke its power to exempt Wells Fargo under Section 304(d). On application by any interested person, Section 304(d) empowers the Commission to ''exempt conditionally or unconditionally any person,

registration statement, indenture, security or transaction * * * from any one or more of the provisions of [the 1939 Act], if and to the extent that such exemption is necessary or appropriate in the *public interest* and consistent with the *protection of investors* and the purposes fairly intended by [the 1939 Act].'' Section 304(d) (emphasis added).

Armstrong has waived notice of a hearing and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter. Any interested persons should look to the application for a more detailed statement of the asserted matters of fact and law. The application is on file in the Commission's Public Reference Section, File No. 22–28616, 450 Fifth Street, NW., Washington, DC, 20549.

The Commission also gives notice that any interested persons may request in writing that a hearing be held on this matter. Interested persons must submit those requests to the Commission no later than August 12, 2002. Interested persons must include the following in their request for a hearing on this matter:

- The nature of that person's interest;
- The reasons for the request; and
- The issues of law or fact raised by the application that the interested person desires to refute or request a hearing on.

The interested person should address this request for a hearing to: Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. At any time after August 12, 2002, the Commission may issue an order granting the application, unless the Commission orders a hearing.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–18404 Filed 7–19–02; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25662; 812–12530]**

## Met Investors Series Trust and Met Investors Advisory LLC; Notice of Application

July 16, 2002.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

*Summary of the Application:* Applicants request an order that would permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) and the Act.

*Applicants:* Met Investors Series Trust (the ''Trust''), all existing and future series of the Trust, and any other registered open-end management investment company and its series that are currently on in the future advised by Met Investors Advisory LLC (the ''Adviser'') or any entity controlling, controlled by, or under common control with the Adviser (collectively, the ''Funds''), and the Adviser.

*Filing Dates:* The application was filed on May 29, 2001, and amended on July 16, 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 August 9, 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, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 22 Corporate Plaza Drive, Newport Beach, CA 92660.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, 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 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

### Applicants' Representations

1. The Trust is organized as a business trust under the laws of the State of Delaware and is an open-end management investment company registered under the Act. The Trust currently offers Class A, Class B, and Class E shares in 22 Funds, one of which is a money market fund subject to rule 2a–7 under the Act (together with any future Funds that are money market funds, the ''Money Market Funds;'' all other Funds that are not money market funds are collectively referred to as the (''Non-Money Market Funds'').[1] Not all Funds offer Class A, Class B, or Class E shares. The Funds selling Class A shares sell such shares to qualified pension and profit sharing plans and to separate accounts of Metropolitan Life Insurance Company and its affiliates (collectively, ''MetLife'') to fund variable annuity and variable life contracts. The Class B and Class E shares are sold exclusively to MetLife separate accounts.[2] The Adviser serves as the investment adviser to each Fund and is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Adviser selects other affiliated and unaffiliated investment advisers registered under the Advisers Act (''Subadvisers'') to manage the portfolio for each Fund.

2. Applicants state that each Non-Money Market Fund has, or may be expected to have, uninvested cash (''Uninvested Cash'') held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, and new investor capital. The Non-Money Market Funds also may receive cash (''Cash Collateral,'' and together with Uninvested Cash, ''Cash Balances'') in connection with a securities lending program (''Securities Lending Agreement'') between the Trust and State Street Bank and Trust Company (''State Street'') under which a Non-Money Market Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. Pursuant to the Securities Lending

[1] All existing Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently relies on the order will comply with the terms and conditions in the application.

[2] Class C shares are authorized for all Funds; however, none are currently being offered.

Agreement, State Street serves as the securities lending agent for the Funds. State Street is not affiliated with the Adviser, the Subadvisers, or any of their affiliates. The Securities Lending Agreement requires that the loans be continuously secured by collateral equal at all times to at least the market value of the securities loaned.

3. Applicants request an order to permit a Non-Money Market Fund to use its Cash Balances to purchase and redeem shares of a Money Market Fund, and the Money Market Fund to sell shares to and redeem shares as requested by the Non-Money Market Fund. Applicants believe that the ability to invest Cash Balances in Money Market Funds will benefit the Non-Money Market Funds by providing higher rates of return, ready liquidity, and increased diversification.

**Applicants' Legal Analysis**

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other acquired investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any persons or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Non-Money Market Funds to invest Cash Balances in the Money Market Funds in excess of the limitations in sections 12(d)(1)(A) and (B).

3. Applicants submit that the proposed transactions do not implicate the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that each of the Money Market Funds will be managed specifically to maintain a highly liquid portfolio and will not be susceptible to undue control due to the threat of large scale redemptions. Applicants also submit that there will be no layering of fees because no sales load, redemption fee or asset based distribution fee will be charged in connection with the purchase and sale of shares of the Money Market Funds. To the extent that both a Money Market Fund and Non-Money Market Fund charge a service fee as defined in rule 2830 of the conduct rules of the National Association of Securities Dealers (''NASD Conduct Rules''), the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the fee incurred by the Non-Money Market Fund. If a Money Market Fund offers more than one class of shares, each Non-Money Market Fund will invest only in the class with the lowest expense ratio at the time of the investment. Before approving any advisory contract with the Adviser or a Subadviser for a Non-Money Market Fund, the board of trustees of the Fund (''Board''), including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser and the Subadviser should be reduced to account for the reduced services provided to the Non-Money Market Fund by the Adviser and the Subadviser as a result of Uninvested Cash being invested in the Money Market Fund. No Money Market Fund will acquire shares of any other investment company in excess of the limits in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that because the Funds share a common investment adviser and have identical Boards, each Fund may be deemed to be under common control and affiliated persons of one another. As a result, section 17(a) would prohibit the sale of the shares of a Money Market Fund to a Non-Money Market Fund and the redemption of the shares by the Non-Money Market Funds.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c). Applicants state that the proposed transactions are reasonable and fair and would not involve overreaching because shares of the Money Market Fund will be purchased and redeemed by the Non-Money Market Funds at net asset value. Applicants also note that the Non-Money Market Funds will retain their ability to invest their Cash Balances directly in money market instruments in accordance with their investment objectives and policies. Applicants state that each Money Market Fund may discontinue selling its shares to any of the Non-Money Market Funds if the Board of the Money Market Fund determines that the sale would adversely affect the Money Market Fund's portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Funds, by participating in the proposed transactions, and the Adviser and Subadvisers, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. In considering whether to permit a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on the same basis and will be indistinguishable from any other shareholder and that the transactions will be consistent with the Act.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The shares of the Money Market Funds sold to and redeemed by the Non-Money Market Funds will not be subject to a sales load, redemption fee or distribution fee under a plan adopted in accordance with rule 12b–1 under the Act. To the extent that both a Money Market Fund and a Non-Money Market Fund may charge a service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the service fee incurred by the Non-Money Market Fund.

2. Before the next meeting of the Board of a Non-Money Market Fund is held for the purpose of voting on an advisory contract with the Adviser or a Subadviser under section 15 of the Act, the Adviser and Subadviser will provide the Board with specific information regarding the approximate costs to the Adviser and Subadviser of, or portion of the advisory fee under the existing advisory contract with the Adviser and the Subadviser attributable to, managing the Uninvested Cash of the Non-Money Market Fund, the Board, including a majority of the Independent Trustees, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser and the Subadviser as a result of Uninvested Cash being invested in the Money Market Funds. The Non-Money Market Fund's minute books will record fully the Board's considerations in approving the advisory contract with the Adviser or a Subadviser, including the considerations relating to fees referred to above.

3. Each Non-Money Market Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Non-Money Market Fund's total assets. For purposes of this limitation, each Non-Money Market Fund or series thereof will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's respective investment restrictions, if any, and will be consistent with each Non-Money Market Fund's policies as set forth in its prospectus and statement of additional information.

5. The Non-Money Market Funds and the Money Market Funds will be advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser.

6. No Money Market Fund will require securities of an investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Agreement, a majority of its Board, including a majority of the Independent Trustees, will approve the Fund's participation in the Securities Lending Agreement. The Board also will evaluate the Securities Lending Agreement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interest of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–18403 Filed 7–19–02; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46211; File No. SR–Phlx 2002–42]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Modified Capitalization Weighting Methodology for Index Options

July 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Phlx Rule 1009A(b), Designation of the Index, to delete, and then to repropose, modified capitalization weighting as an approved weighting methodology for index options so that there is no change to the actual present language of Rule 1009A(b). The following is the text of the proposed rule change. Language that is currently in the text of the rule, which is proposed to be deleted and immediately reinserted, is underlined.

**Designation of the Index**

Rule 1009A.

(a) No change.

(b)–(b)(1) No change.

(b)(2) The index is capitalization-weighted, price-weighted*, modified capitalization-weighted* or equal dollar-weighted, and consists of ten or more component securities;

(b)(3)–b(10) No change.

(b)(11) An equal dollar-weighted index will be rebalanced at least once every calendar quarter*; and a modified capitalization-weighted index will be rebalanced at least twice annually;*

**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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to first delete, and immediately to reinsert pursuant to Commission approval, language in Rule 1009A(b) relating to modified capitalization weighting as a permissible weighting methodology for narrow-based index options listed and traded pursuant to Rule 1009A(b). The language is currently in effect, inasmuch as it became immediately effective on March 1, 2002, pursuant an Exchange filing made pursuant to section

19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4]

In 1998 the Commission adopted new Rule 19b–4(e),[5] eliminating the requirement that a self-regulatory organization (''SRO'') file a proposal under Section 19(b)(3)(A) [6] to list and trade options on a narrow-based index, provided that the SRO has generic listing criteria approved by the Commission and meets certain other requirements. The Exchange is now seeking Commission approval, under section 19(b)(2) of the Act,[7] of the addition of modified capitalization weighting as a permissible methodology in order to ensure the applicability of Rule 19b–4(e) [8] to products which the Exchange may list and trade pursuant to Rule 1009A(b).[9] With the affirmative Commission approval of the proposed rule change, Phlx will have greater assurance that it will be permitted under Rule 19b–4(e) to introduce new options that are based on narrow-based stock indexes using modified capitalization weighting, but without the Exchange having to file a proposal under Section 19(b)(3)(A) of the Act.[10]

As discussed in the Exchange's original filing made pursuant to section 19(b)(3)(A) of the Act,[11] the purpose of the language adding modified capitalization weighting as a permitted weighting methodology is to increase and diversify the number and types of securities products the Exchange may offer to the investing public. The reasons for the original proposal are set forth below and serve as the basis of the Exchange's current request for Commission approval under section 19(b)(2) of the Act.[12]

Increasingly, the Exchange receives requests to trade new indexes using the modified capitalization weighting methodology. Accordingly, in order to accommodate those requests in a timely manner and respond to market demand, the Exchange seeks to permit this calculation methodology for narrow-based indexes. The Exchange wishes to accommodate these requests and proposes to add this methodology to the existing narrow based criteria set forth in Phlx Rule 1009A(b), which permits the listing of options on stock index groups pursuant to Rule 19b–4(e) under the Act.[13] Use of the modified capitalization weighted methodology (in addition to the capitalization-weighted, price-weighted, or equal dollar-weighted methodologies) should allow the Exchange greater flexibility in developing indexes and facilitate the listing of options on stock industry index groups that more accurately reflect the industry represented by the index.

When determining the value using capitalization weighting methodology, the following calculation applies: multiply the primary exchange regular-way last sale price of each component security by the number of shares outstanding, add the result for each product and divide the sum by the current index divisor. The index value for a modified capitalization-weighted index is calculated in a similar manner. However, instead of using the actual number of shares outstanding, an adjusted number of shares outstanding are used in the calculation. (Thus, the following calculation applies: multiply the primary exchange regular-way last sale price of each component security by an adjusted number of shares outstanding, add the results for each product, and then divide the sum by the current index divisor). The adjusted number of shares is determined by a proprietary algorithm. When using the modified capitalization weighting, the Exchange will use a calculation methodology that will be clearly defined and will consist of objective standards in accordance with the generic criteria set forth in Phlx Rule 1009A. In addition, the terms of the index will be defined in the marketing materials describing a new index and in the circulars that the Exchange distributes to its members upon the launch of a new index option.

The modified capitalization weighting methodology uses an adjusted number of shares outstanding to prevent component companies with a relatively high market capitalization from representing an inordinately large portion of an index's value. For example, inclusion of a company that is highly capitalized, in relation to the other smaller capitalized companies in the index, may result in the higher capitalized company's representation in the index exceeding 25% of the index's value. Thus, options on these indexes could not be listed on the Phlx. However, because use of the modified capitalization methodology permits a reduction in the higher capitalized company's representation in the index to an amount less than 25% of the index's value, the listing criteria of Phlx Rule 1009A(b)(6) are satisfied. Therefore, modifying the capitalization amounts of the securities underlying an index can prevent an individual stock from inappropriately skewing the performance of an entire index, thus market accuracy and transparency should be correspondently enhanced by use of the modified capitalization methodology. Currently, indexes such as the Nasdaq 100 [14] and Fortune e–50 [15] utilize modified capitalization weighting. Thus, it is an established calculation methodology that the Exchange seeks to capture in its listing standards.

Additionally, the Exchange will review the component weightings of indexes employing the modified capitalization weighting methodology at least semi-annually (or pursuant to then-existing standards), and if necessary, adjust them to ensure that the index continues to meet the weighting guidelines. Also, adjustments will be made on an intra-semi-annual basis, as necessary, to reflect corporate actions such as, share issuances, repurchases and other events of significance.

2. Statutory Basis

For these reasons, the Exchange believes that its proposal is consistent with section 6(b) [16] of the Act in general, and furthers the objectives of section 6(b)(5),[17] in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect the investors and the public interest, by encouraging and adding flexibility to the development of new indexes, thereby, increasing the amount of new products available to the investing public, consistent with the purposes of option listing standards. Specifically, the Exchange seeks to list

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). *See* Securities Exchange Act Release No. 45622 (March 21, 2002), 67 FR 15269 (March 29, 2002).

[5] 17 CFR 240.19b–4(e). *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 240.19b–4(e).

[9] Rule 19b–4(e) provides in relevant part that ''[t]he listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change * * * if the Commission has *approved,* pursuant to section 19(b) of the Act (15 U.S.C. 78s(b)), the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class (emphasis added).''

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 15 U.S.C. 78s(b)(2). To date, the Exchange has not listed and traded any modified capitalization weighted index options pursuant to Rule 1009A(b).

[13] 17 CFR 240.19b–4(e).

[14] The Nasdaq–100®, Nasdaq–100 Index®, and Nasdaq® are trade or service marks of The Nasdaq Stock Market, Inc.

[15] The Fortune e–50® is a trade or service mark of the American Stock Exchange LLC.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

new index options based on this calculation methodology pursuant to Rule 1009A(b), the Exchange's generic narrow-based index option rule. The Exchange believes that it will have greater assurance that such options are eligible for listing pursuant to Rule 19b–4(e)[18] if the language regarding modified capitalization weighting as a permitted index weighting methodology is added to the text of Rule 1009A(b) pursuant to Commission approval.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were neither solicited nor received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PHLX –2002–42 and should be submitted by August 12, 2002.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

After careful review, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act.[19] The proposed rule change will enable the Exchange to provide investors access to certain narrow-based index options based upon modified capitalization weighted indexes more quickly than would be possible if the Exchange were required to a file proposed rule change for each such option. Acceleration of the Commission's approval order will permit the Exchange to begin eligibility of modified capitalization weighted indexes for narrow based index option trading, with the assurance that such indexes may underlie options to which Commission Rule 19b–4(e) applies. The Commission notes that the proposed rule change is significantly similar to the rules of another self-regulatory organization already approved by the Commission pursuant to section 19(b)(2) of the Act and does not raise novel regulatory issues.[20] Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[21] to approve the proposal on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–18402 Filed 7–19–02; 8:45 am]

**BILLING CODE 8010–01–P**

[18] 17 CFR 240.19b–4(e).

[19] 15 U.S.C. 78s(b)(2).

[20] *See* Securities Exchange Act Release No. 41557 (June 24, 1999), 64 FR 36055 (July 2, 1999) (Order approving File No. SR–Amex–99–09 to allow modified equal-dollar and modified capitalization weighting calculation methodologies for narrow based index options on the American Stock Exchange LLC).

[21] 15 U.S.C. 78f(b)(5).

[22] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

**1. Employee Verification Service (EVS)**

*Background*

Under Internal Revenue Service regulations, employers are required to provide wage and tax data to SSA using form W–2, Wage and Tax Statement or its electronic equivalent. As part of this process, the employer must furnish the employee's name and Social Security Number (SSN). This information must match SSA's records in order for the employee's wage and tax data to be properly posted to the Earnings Record. Information that is incorrectly provided to the Agency must be corrected by the employer using an amended reporting form, which is a labor-intensive and time-consuming process for both SSA and the employer. Therefore, to help ensure that employers provide accurate name and SSN information on their wage reports, SSA is offering the EVS service whereby employers can verify, via magnetic tape, cartridge, diskette, paper, and telephone, if the reported name and SSN of their employee matches SSA's records.

*EVS Collection*

SSA will use the information collected through the EVS to verify that the employee name and SSN information, provided by employers, matches SSA records. SSA will respond to the employer informing them only of matches and mismatches of submitted information. Respondents are employers

who provide wage and tax data to SSA who elect to use EVS to verify their employees' names and SSNs.

*Type of Request:* New Information Collection.

*Number of Respondents:* 100,000.

*Frequency of Response:* 5.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 83,333 hours.

**2. 20 CFR Part 422.527, Private Printing and Modification of Prescribed Applications and Other Forms—0960–NEW**

SSA uses the information required by this regulation to process requests from a person, institution or organization (requesting entities) that want to reproduce, duplicate, or privately print any SSA application or other form prescribed by SSA. The requesting entities must obtain prior approval from SSA and make their requests in writing, providing the required information set forth in the regulation. Respondents are the requesting entities that want to reproduce, duplicate, or privately print any SSA application or other form.

*Type of Request:* New Information Collection.

*Number of Respondents:* 4.

*Frequency of Response:* 1.

*Average Burden Per Response:* 8 minutes.

*Estimated Annual Burden:* 1/2 hour.

**3. Medical Source Statement of Ability To Do Work-Related Activities (Physical), Form HA–1151; Medical Source Statement of Ability To Do Work-Related Activities (Mental), Form HA–1152—0960–NEW**

SSA's Office of Hearing and Appeals (OHA) uses the HA–1151 (Physical) and its companion form HA–1152 (Mental) to collect information that Administrative Law Judges and the Appeals Council of OHA require to determine the residual functional capacity (RFC) of individuals who are appealing denied claims for benefits based on disability. RFC must be determined to decide cases that cannot be decided based on current work activity or on medical facts alone. Both forms are completed by medical sources that provide medical reports based either on existing medical evidence or on consultative examinations conducted for the purposes of the report. Respondents to these forms are medical sources that provide medical reports.

*Type of Request:* New Information Collections.

*HA–1151*

*Number of Respondents:* 5,000.

*Frequency of Response:* 20.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 25,000 hours.

*HA–1152*

*Number of Respondents:* 5,000.

*Frequency of Response:* 20.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 25,000 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–0454, or by writing to the address listed above.

The Census Bureau Survey of Income and Program Participation (SIPP) on Behalf of the Social Security Administration (SSA)—0960–NEW. SSA has requested the Census Bureau to include in its SIPP interviews scheduled for January 2003 a sample of social security disabled insurance beneficiaries and supplemental security income recipients. SSA will use these data to conduct statistical research of recipients of SSA-administered programs. The *SIPP for SSA Beneficiaries* is a household-based survey molded around a central ''core'' of labor force and income questions. The core is supplemented with questions designed to address specific needs, such as obtaining information about assets and liabilities, as well as expenses related to work, health care, child support and real estate/dependent care. These supplemental questions are included with the core and are referred to as ''topical modules.''

The survey is currently scheduled for one month and will include approximately 1,000 households. We estimate that each household will average 2.1 people, yielding 2,100 interviews. Interviews take 30 minutes on average. The total burden for the *SIPP for SSA Beneficiaries* would be 1,050 hours.

The topical modules for the *SIPP for SSA Beneficiaries* collect information about:

- Medical Expenses and Utilization of Health Care (Adults and Children)
- Work Related Expenses, Child Support Paid and Child Care Poverty
- Assets, Liabilities, and Eligibility
- Real Estate and Dependent Care

The survey interviews will be conducted from January 1, 2003 through January 31, 2003.

*Type of Request:* New Information Collection.

*Number of Respondents:* 2,100.

*Frequency of Response:* 1.

*Average Burden Per Response:* 30 minutes.

*Estimated Annual Burden:* 1,050 hours.

Dated: July 15, 2002.

**Elizabeth A. Davidson,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 02–18189 Filed 7–19–02; 8:45 am]

BILLING CODE 4191–02–P

## TENNESSEE VALLEY AUTHORITY

### Sunshine Act; Meeting

**AGENCY HOLDING THE MEETING:** Tennessee Valley Authority (Meeting No. 1540).

**TIME AND DATE:** 9 a.m. (CDT), July 23, 2002.

**PLACE:** TVA Mayfield Customer Service Center, 10060 State Route 45 North, Hickory, Kentucky.

**STATUS:** Open.

**Agenda**

Approval of minutes of meeting held on May 16, 2002.

**New Business**

*A—Budget and Financing*

A1. Amendment of previously adopted resolutions to authorize the issuance of an additional $1 billion of electronotes[sm].

*C—Energy*

C1. Contract with the Babcock & Wilcox Company to design, engineer, fabricate, and deliver boiler components, assemblies, genuine repair parts, and related engineering services for any TVA fossil plant.

C2. Contracts with Oxbow Mining, LLC; West Ridge Resources, Inc.; and Co-op Mining Company for coal supply for various fossil plants.

C3. Contract with Electrical Supply Alliance for general electrical supplies and electrical wire and cable for any TVA location.

C4. Contract with Fastenal Company for nonnuclear fasteners (nuts, bolts, screws, washers, etc.) at any TVA location.

C5. Contract with Stone and Webster Construction, Inc., for supplemental maintenance and modifications for TVA Nuclear operating units and for Browns Ferry Nuclear Plant Unit 1 recovery.

C6. Delegation of authority to the Senior Vice President, Procurement, to contract for specified materials and

services for the recovery of Browns Ferry Nuclear Plant Unit 1.

C7. Contract with Westinghouse Electric Company for replacement steam generators with associated equipment and licensing support for Watts Bar Nuclear Plant Unit 1.

*E—Real Property Transactions*

E1. Deed modification affecting 0.1 acre of former TVA land on Norris Reservoir, a portion of Tract No. XNR–597, in Anderson County, Tennessee, to allow James M. Porter clear title to his property.

E2. Sale of a 30-year term public recreation easement to Anderson County, Tennessee, affecting approximately 1.6 acres of land on Bull Run Fossil Plant Reservation in Anderson County, Tennessee, Tract No. XBRSP–6RE.

E3. Sale of a noncommercial, nonexclusive permanent easement to Roy White, affecting approximately 0.13 acre of Tellico Reservoir shoreline in Monroe County, Tennessee, Tract No. XTELR–229RE.

E4. Grant of a permanent easement for a substation expansion to Lenoir City Utilities Board, affecting approximately 0.73 acre of TVA property on Fort Loudoun Dam Reservation in Loudon County, Tennessee, Tract No. XTFL–127U.

E5. Deed Modification affecting approximately 88 acres of private property on Wheeler Reservoir in Limestone County, Alabama, Tract No. XWR–288, to allow residential use.

E6. Grant of a 30-year term public recreation easement to the Alabama Department of Conservation and Natural Resources, affecting approximately 18,048 acres of land on Guntersville and Wheeler Reservoirs in Jackson, Lawrence, Limestone, and Morgan Counties, Alabama (Tract Nos. XTGR–155 WL, XTWR–45RE, and XTWR–114WL).

E7. Land-use allocation change to the Guntersville Reservoir Land Management Plan from industrial/commercial to residential access, affecting approximately 1.3 acres of land on Guntersville Reservoir in Marshall County, Alabama, Tract No. GR–925.

E8. Abandonment of a 50-foot wide right-of-way affecting approximately 0.51 acre of land on Guntersville Reservoir in Marshall County, Alabama, Tract No. XGR–365.

*F—Other*

F1. Approval to file condemnation cases to acquire transmission line easements and rights-of-way affecting Tract No. MRFSTB–6A, Great Falls-Murfreesboro-Smith Nashville Tap to Blackman Transmission Line in Rutherford County, Tennessee.

**Information Items**

1. Approval of in-house equity index fund management by TVA Treasury Staff for TVA Master Decommissioning Trust.

2. Approval of Amendments to the Rules and Regulations of the TVA Retirement System and to the provisions of the TVA Savings and Deferral Retirement Plan (401(k) Plan).

3. Approval of Harbour Vest Partners, LLC, as a new investment manager for the TVA Retirement System and approval of the investment management agreement.

4. Approval of a $1 million loan to the Tennessee Valley Public Power Association to help it purchase a building to house its new permanent headquarters.

5. Approval for TVA to participate in the Southern Appalachian Fund by purchasing 10 limited partnership units totaling $1 million.

6. Confirmation of the authorization of the public auction sale affecting approximately 38.3 acres of a portion of the Beech River Project property in Henderson County, Tennessee, Tract No. XBRPIC–3.

7. Approval of a land allocation change and sale of permanent easements to the Public Park Authority of the Shoals for construction of a hotel and convention center complex and road access, affecting approximately 12.8 acres of land on Wilson Dam Reservation in Lauderdale County, Alabama, Tract No. XWDR–9E.

8. Approval of a public auction sale affecting approximately 7.45 acres of land in Madison County, Alabama, Tract No. XHCSC–1.

9. Grant of a permanent easement to the Alabama Department of Transportation for highway and bridge improvement purposes, affecting approximately 12 acres of land on the Upper bear Creek Reservoir site in Franklin County, Alabama, Tract No. XTBCUR–4H.

10. Approval of the Standards of Conduct for Functional Separation of Wholesale Merchant Function from Transmission System Operations and Reliability Functions and Related Information, 2002 Edition, to replace TVA's Code of Conduct, Open access Transmission.

11. Approval of arrangements covering interconnection of TVA's transmission system to the Choctaw Gas Generation, LLC, generating facility located near Ackerman in Choctaw County, Mississippi.

12. Approval of condemnation cases to acquire transmission line easements and rights-of-way affecting Tract No. LASL–2, Lowndes-Alabama State Line in Lowndes County, Mississippi, and Tract No. HCVB–1001TE, Hanceville-Bremen in Cullman County, Alabama.

13. Approval of filing of condemnation cases to acquire transmission line easements and rights-of-way affecting Tract No. CHMDMW–25, Cordova-Holly Springs Tap to Miller Substation Tap to DeSoto Road Substation Tap to Mineral Wells Transmission Line in DeSoto County, Mississippi, and Center Point-Swamp creek Transmission Line in Whitfield County, Georgia.

14. Approval of filing of condemnation cases to acquire transmission line easements and rights-of-way affecting Tract No. CPGSSC–7A–AR, Center Point-Swamp Creek Transmission Line and Tract No. RSCP–161, Rock Springs-Center Point Transmission Line in Whitfield County, Georgia.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: July 16, 2002.

**Clifford L. Beach, Jr.,**

*Attorney and Assistant Secretary.*

[FR Doc. 02–18492 Filed 7–17–02; 4:43 pm]

**BILLING CODE 8120–08–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Approval of Noise Compatibility Program, Boca Raton Airport, Boca Raton, FL

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

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Boca Raton Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal

responsibilities in Senate Report No. 9652 (1980). On December 31, 2001, the FAA determined that the noise exposure maps submitted by the Boca Raton Airport Authority under part 150 were in compliance with applicable requirements. On June 28, 2002, the Administrator approved the Boca Raton Airport noise compatibility program. Most of the recommendations of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Boca Raton Airport noise compatibility program is June 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Bonnie L. Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822, (407) 8126331, Extension 30. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Boca Raton Airport, effective June 28, 2002.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Boca Raton Airport Authority submitted to the FAA on December 11, 2001, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from March 18, 1999, through December 11, 2001. The Boca Raton Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on December 31, 2001. Notice of this determination was published in the **Federal Register** on December 31, 2001. As a result of the FAA actions on the air traffic procedural recommendations, above, the FAA considers the forecast 2006 NEM to be ''2006 with Existing Noise Compatibility Program'', for purposes of application of the following Land Use Elements. As the FAA announces its actions on the NCP Update in the **Federal Register,** it is issuing a revised determination that this forecast NEM will replace the ''2006 Noise Exposure Map with Recommended Noise Compatibility Program'' that was determined in compliance with part 150 by FAA on December 31, 2001.

The Boca Raton Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2006. It was requested that FAA evaluate and approve this material as a compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on December 31, 2001, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained nineteen (19) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective June 28, 2002.

Outright approval was granted for seven (7) of the nineteen (19) specific program elements. One (1) element was disapproved for the purposes of part 150, eleven (11) elements were partially approved. The approval action was for the following program measures:

| Measure | Description | NCP pages |
|---|---|---|
| | **Operational Measures** | |
| 1. Runway 5 noise abatement turn to 360°, to climb west of Interstate 95, to 1,500′. | This measure replaces Measure 1 from the 1991 Noise Compatibility Program, page 3–11, ''Voluntary Runway 5 noise abatement turn to 360 degrees to climb west of I–95. Maintain heading until reaching 1,500 feet.'' FAA Action: Approved as voluntary, when air traffic and airspace safety and efficiency conditions permit. This procedure places traffic over the noise-compatible interstate corridor, and was approved as a voluntary measure in the Noise Compatibility Program ROA that was signed by FAA on August 19, 1991. However, since approval of this measure, the number of aircraft instrument operations at this airport and in the Palm Beach region has increased steadily. Because of the growing complexities of safely and efficiently controlling air traffic in this area, it has become more difficult to allow extensive use of this voluntary procedure. This departure procedure not only affects the flow of traffic at this airport, but also requires additional coordination with several different facilities that are controlling aircraft traversing in many different directions comprised of inbound and outbound traffic from Palm Beach International Airport, Pompano Airpark, and Boca Raton Airport. This procedure directs VFR aircraft into an IFR final approach course (VOR/DME and GPS–A); when these conflicting procedures are in effect, capacity is reduced as arrivals would have to be sequenced with departures. | 75, 93, 131, 210, Table 12.1. |
| 2. Runway 23 noise abatement turn to 255°, to climb over Town Center, to 1,500′. | This measure replaces Measure 2 from the 1991 Noise Compatibility Program, page 3–12, ''Establish a voluntary Runway 23 noise abatement turn to 255 degrees to climb over area southwest of airport. Maintain heading until reaching 1,500 feet.'' FAA Action: Approved as voluntary, when air traffic and airspace safety and efficiency conditions permit. Aircraft would fly over a compatible commercial corridor. This element was approved as a voluntary measure in the Noise Compatibility Program signed on August 19, 1991. However, since approval of this measure, the number of aircraft instrument operations at this airport and in the Palm Beach region has increased steadily. Because of the growing complexities of safely and efficiently controlling air traffic in this area, it has become more difficult to allow use of this voluntary procedure. This procedure not only affects the flow of traffic at this airport, but also requires additional coordination with several different facilities that are controlling aircraft traversing in many different directions comprised of traffic from Palm Beach International Airport, Pompano Airpark, and Boca Raton Airport. This procedure directs aircraft towards the Pompano Airpark localizer and GPS final approach course to Runway 15, and mandatory use of this procedure would limit capacity at all three airports because of sequencing requirements for arrivals with departures. | 75, 93, 131, 210, Table 12.1. |
| 3. Recommend jets use NBAA noise abatement procedures, including ''close-in'' NADP. | This measure replaces Measure 5 from the 1991 Noise Compatibility Program, page 3–24, ''Recommend corporate jet pilots use of NBAA noise abatement procedures, including 'close-in' departure procedures.'' FAA Action: Approved as a voluntary measure. The NPC supplemental analysis shows that use of the noise abatement procedure instead of the standard departure procedure would reduce noise on a single event basis. | 75, 131, 157, 210, and Tables 12.1. |
| 4. Right-hand traffic pattern on Runway 23. | This measure replaces Measure 4 from the 1991 Noise Compatibility Program, page 3–12, ''Continue right-hand traffic pattern on Runway 23.'' Current procedures at the airport call for right-handed traffic for Runway 23 operations to avoid overflight of the relatively more densely developed areas east of the airport, including Florida Atlantic University. FAA Action: Approved as voluntary, when air traffic and airspace safety and efficiency conditions permit. This measure was included in the 1991 Noise Compatibility Program for Boca Raton Airport. | 192, 210, and Table 12.1. |
| 5. Left-hand traffic pattern on Runway 5, with right-hand arrivals from the east. | This measure replaces Measure 3 from the 1991 Noise Compatibility Program, page 2–11, ''Continue left-hand traffic pattern on Runway 5.'' FAA Action: Approved in part, disapproved in Part. A left-hand traffic pattern is a standard VFR operational procedure and was included in the 1991 Noise Compatibility Program for Boca Raton Airport. The standard left-hand traffic pattern operation on Runway 5 is approved. The simultaneous right-hand traffic pattern for arrivals from the east is disapproved. This activity puts aircraft in direct conflict with other arriving aircraft using the left-hand traffic pattern. | 133, 139, Table 9.8, 192, 210, and Table 12.1. |

| Measure | Description | NCP pages |
|---|---|---|
| 6. North-flow preferential runway use. | FAA Action: Approved as voluntary, when air traffic and airspace safety and efficiency conditions permit. North-flow operation on Runway 5 is currently being used approximately 80% of the time because of the winds and air traffic control measures. Table 9.8 indicates that mandatory implementation of this measure would increase noise to approximately 86 people in the DNL 65 dB noise contour, and reduce noise to approximately 264 people in the DNL 60 dB noise contour. The FAA considers impacts at noise levels of DNL 65 dB and greater to be significant when compared to lesser noise levels of ''moderate'' impact (less than DNL 65 dB, and greater than DNL 55 dB), as described in the Federal compatible land use guidelines at Table 1 of part 150. In this case, the airport operator has adopted a deviation from the Federal compatibility guidelines published in part 150 at Table 1 (see NCP, chapter 7). Based on air traffic concerns expressed above at FAA's action on measures 1 and 2, the FAA does not expect continued use of this measure to change from the present values. | 132, 139, and 210, and Tables 9.8 and 12.1. |
| 7. Further analysis of restrictive options. | This measure includes: 24-hour restriction on stage 1 jet operations, night restrictions on non-stage 3 operations, and night restriction on all aircraft operations. This recommendation is to continue evaluation of other options to reduce noise impacts outside of the FAR part 150 process. Study of these recommendations will require additional analysis under FAR part 161 and evaluation of the Grant Assurances for which the airport is obligated under past Grant Agreements with the FAA. FAA Action: Approved for study. The Boca Raton Airport's NCP in Table 9.8 indicates that approximately 2,180 people will be exposed to significant levels of aircraft noise within the DNL 65 dB 2006 Forecast NEM contour, absent mandatory implementation of air traffic procedures. The Boca Raton Airport Authority, the airport sponsor, proposes to study several noise restriction options that could further reduce noise impacts. The study should reflect the noise contours and land use compatibility achieved under this approved part 150 program and evaluates additional noise benefits that could be realized with any particular restriction. FAA's part 150 approval for the additional study in no way prejudges the study's outcome or implies agreement with any restriction that may result from the study. In order to be eligible for Federal funding, the study results must be incorporated into a part 150 update.<br>All proposed restrictions under consideration by the Boca Raton Airport Authority must be evaluated for consistency with Federal law, including assurances in airport grant agreements. Federal law requires that restrictions be reasonable, have no adverse effect on safety or efficient use of the airspace, not pose an undue burden to interstate commerce, not be unjustly discriminatory, and not intrude into areas that are Federally preempted. In addition, proposed restrictions that would affect the operations of Stage 2 and Stage 3 aircraft are subject to Part 161, including public notice and analysis requirements. FAA approval, pursuant to specified statutory criteria, is required under Part 161 for a restriction affecting Stage 3 operations. The restriction that would affect only Stage 1 aircraft is not subject to Part 161, but is subject to all other requirements of Federal law. | 192, 210, and Tables 12.1. |
| 8. Obtain ''formal'' FAA implementation status for Elements 1, 2, 4, 5, and 6. | This new recommendation is to obtain formal agreement with the FAA to incorporate Elements 1, 2, 4, 5, and 6 into a Tower Order which will require the air traffic controllers to follow these procedures at all times. FAA Action: Disapproved. Under this formal agreement, there would be no allowance for weather conditions or for the growing complexities of controlling traffic in the Palm Beach area resulting from the steady increase in air traffic through the area. As indicated in FAA's determinations on these individual measures, above, mandatory use of these flight patterns could impact aircraft safety and efficiency. To the extent the FAA can implement the measures, it will direct pilots to these headings and traffic patterns. | 191, 192, 211, and Table 12.2 |
| **Land Use Measures** | | |
| | As a result of the FAA actions on the air traffic procedural recommendations, above, the FAA considers the forecast 2006 NEM to be ''2006 with Existing Noise Compatibility Program'', for purposes of application of the following Land Use Elements. As the FAA announces its actions on the NCP Update in the **Federal Register**, it is issuing a revised determination that this forecast NEM will replace the ''2006 Noise Exposure Map with Recommended Noise Compatibility Program'' that was determined in compliance with part 150 by FAA on December 31, 2001.<br>Measures 1 through 4, and 9 through 11, replace measures that were approved by the FAA in 1991 for that NCP at Boca Raton Airport. The other Land Use measures are new recommendations in this part 150 Update | |

| Measure | Description | NCP pages |
|---|---|---|
| 1. Zoning ..... | The City and County will continue to update and adopt a revised Airport Zoning and Land Use Ordinance consistent with the updated NEM's. FAA Action: Approved as a continuing measure. The recommendation, included in the 1991 Noise Compatibility Program, has been partially implemented by the affected land use jurisdictions. | 195, 196, 211, and Table 12.1. |
| 2. Building code revision ..... | The Boca Raton Airport Authority will continue to work with local jurisdictions to include specifications for the use of noise insulating materials in construction within/adjacent to approved NEM's. FAA Action: Approved as a continuing measure. | 196, 211, and Tables 12.1. |
| 3. Local environmental review | The City and County implemented an environmental review through their respective airport zoning and land use regulations that they adopted in accordance with Chapter 333 of the Florida Statutes (Article 18 of the County Land Development Code and City Ordinance 3274). Both the County and City Planning Departments notify The Boca Raton Airport Authority of potential developments and request comment. It is necessary to carry the measure forward to this recommended NCP to ensure its continued implementation. FAA Action: Approved as a continuing measure. | 197, 211 and Tables 12.1. |
| 4. Comprehensive Planning .... | The comprehensive plans for the City of Boca Raton and Palm Beach County would be revised to fully address the issues of aircraft noise on existing and proposed land use. The State Statutes require that the plans be evaluated and updated every five years. FAA Action: Approved as a continuing measure. | 196 and 211, and Tables 12.1. |
| 5. Real Estate Disclosure ..... | This measure will require disclosure of aircraft noise levels and their meaning to purchasers or renters prior to the time of the contract or title transfer for residential property. Disclosure will involve a form to be signed by the prospective buyer or renter similar to what is required by truth-in-sales laws. This will ensure that new residents are aware of the noise environment prior to purchase or rental of properties within the noise zones. FAA Action: Approved. | 200, and 211, and Tables 12.1. |
| 6. Easement Acquisition ..... | This measure is to purchase avigation easements from noise-sensitive property owners within the 60 DNL noise contour for ''2006 with the recommended NCP''. This measure would allow the acquisition of easements over developed property as well as undeveloped property. Only existing private homes and public use (schools) within the DNL 60 dB contour are assumed to be included. Property owners refusing participation in the sound insulation program may be eligible for easements. FAA Action: Approved to the extent the properties are located within the official NEM's, specifically ''2001 NEM with Existing Noise Compatibility Program''. The specific identification of the structures recommended for inclusion in the program will be required prior to approval for federal funding. | 201 and 211, Exhibits 8.1, and Tables 12.1. |
| 7. Sound Insulation ..... | This measure is to provide the opportunity for sound insulation of noise-sensitive structures within the 65 DNL contour, for ''2006 with the recommended NCP.'' Avigation easements are typically obtained in return for property owner participation. Only existing private homes and public uses within the 2006 65 dB DNL contour are assumed to be included. Property owners refusing sound insulation may be eligible for easements and vice-versa. FAA Action: Approved to the extent the properties are located within the DNL 65 dB noise contour of the official NEM's, specifically ''2001 NEM with Existing Noise Compatibility Program''. The specific identification of the structures recommended for inclusion in the program will be required prior to approval for federal funding. | 201, and 211, Exhibits 8.1, and Tables 12.1. |
| 8. Noise and Operations Monitoring System. | This measure is to include provisions for the Boca Raton Airport Authority to acquire capabilities to monitor operations, noise, and complaints, in an integrated system. This system will include purchase of equipment to monitor, record, analyze, and report on actual flight track geometry and runway utilization. This measure also includes six to eight permanent noise monitors and one portable noise monitor that will allow improved communication with the community when addressing aircraft operations. This system will also include the capabilities to identify complainants' addresses, correlate complaints with operations and noise data and develop a database. FAA Action: Approved to the extent that the requested equipment is allowed to interface with FAA equipment and operations. Eligibility for Federal funding will be determined at the time of application. | 205, and 211, and Tables 12.1. |
| 9. Noise Abatement Advisory Committee. | This measure is to continue the ongoing Noise Abatement Committee to discuss noise abatement issues with the public and interested parties. FAA Action: Approved. | 207, and 212, and Tables 12.1. |
| 10. Noise Office Staff ..... | This measure is to continue to employ a full-time noise and community affairs staff person. FAA Action: Approved. | 207, and 212, and Tables 12.1. |

| Measure | Description | NCP pages |
|---|---|---|
| 11. Program Publicity ..... | This measure is to continue to publicize the approved program. (The measure replaces Measure 7, ''Install on-airfield noise abatement signage'', page 5–21, of the 1991 Noise Compatibility Program). Once the FAA has approved the revised NCP, and the BRAA should take steps to publicize the program, including: revisions to on-airfield signs, posters for pilot lounges or flight planning areas, pilot handouts, such as flight manual inserts and web site upgrades, that summarize the preferred procedures. FAA Action: Approved in part, disapproved in part. The methods to publicize this revised noise compatibility program are approved. Specific language to be included is disapproved herein. Prior to release, each publicity measure must be approved for wording and content by the appropriate FAA office, and should clearly state that the noise abatement measures are voluntary, and that pilots, while encouraged to request the noise abatement departure heading, are always required to follow the directions provided by air traffic control. | 207 and 212, and Tables 12.1; FAA letter dated March 29, 2002. |

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on June 28, 2002. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Boca Raton Airport Authority.

Issued in Orlando, Florida on July 12, 2002.

**W. Dean Stringer,**

*Manager, Orlando Airports District Office.*

[FR Doc. 02–18339 Filed 7–19–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: King County Washington

**AGENCY:** Federal Highway Administration (FHWA), King County Department of Transportation, WA

**ACTION:** Notice of Intent to prepare a draft supplemental environmental impact statement (EIS).

**SUMMARY:** The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT) and King County Department of Transportation, is issuing this notice to advise the public that a supplement to the final EIS will be prepared on the proposal to replace the Elliott Bridge on 149th Avenue Southeast where it crosses the Cedar River approximately three miles east of downtown Renton in King County, Washington.

**FOR FURTHER INFORMATION CONTACT:** Jim Leonard, P.E., Urban Area Engineer, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, Washington 98501–1284, Telephone: (360) 753–9408 or Tina Morehead, Senior Environmental Engineer, King County, Road Services Division, Department of Transportation, King Street Center M.S. KSC–TR–0231, 201 South Jackson Street, Seattle, WA 98104–3856, Telephone: (206) 296–3733.

**SUPPLEMENTARY INFORMATION:** The Record of Decision for the orginal EIS for the improvements (FHWA–WA–EIS–92–4–F) was signed on November 21, 1995. In the original EIS, the proposed improvements to the Elliott Bridge provided a three-lane bridge (two travel lanes and one center lane) with pedestrain sidewalk and associated approach road realignment. Improvements to the bridge were, and still are, considered necessary to provide for traffic circulation, roadway safety, and structural stability.

After approval and subsequent appeal of the local shoreline substantial development permit, King County withdrew its shoreline permit application based on issues related to the Federal Endangered Species Act. Since that withdrawal, the county and FHWA have reevaluated the project and determined that a supplemental EIS needs to be prepared to address those issues.

No formal scoping period will be held. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Subsequent to distribution of the draft supplemental EIS, a public hearing will be held during the EIS comment period. The location and time of the public hearing will be announced in the local news media and through a public mailing when it is scheduled. The draft supplemental EIS will be available for public and agency review prior to the public hearing. Release of the draft supplemental EIS for public comment and the public hearing will also be announced in the local news media as these dates are established.

Comments or questions concerning this proposed action and the supplemental EIS should be directed to FHWA or King County at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 9, 2002.

**Jim Leonard,**

*Urban Area Engineer, Federal Highway Administration, Washington Division.*

[FR Doc. 02–18328 Filed 7–19–02; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Travis County, TX

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed new location highway/tollway project in Travis County, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Patrick Bauer, P.E., District Engineer, Federal Highway Administration, 826 Federal Office Building, 300 E. 8th Street, Austin, Texas 78701, telephone number (512) 536–5950 or Ms. Stacey Benningfield, Environmental Program Manager, Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701, telephone number (512) 225–1351.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation, will prepare an EIS for proposed State Highway 45, between Interstate Highway 35, south of Austin, Texas, and proposed State Highway 130/existing US Highway 183, southeast of Austin in Travis County, Texas. As currently envisioned, proposed SH 45 would ultimately be a six-lane controlled access roadway with directions of travel being separated by a barrier or median. Interchanges or grade separations would be constructed at major thoroughfares and direct connector ramps would be provided at IH 35 and State Highway 130/US Highway 183. The proposed right-of-way width would be 400′ (usual minimum) and the project length would be approximately 7 miles. Alternatives to be addressed in the EIS include (1) upgrading existing roadways, (2) new location alternatives and (3) the no-build alternative. The proposed project is considered necessary in order to provide for existing and projected traffic demand in the project area.

The proposed project is considered a candidate for development as a toll road. Accordingly, in conjunction with preparation of the EIS, TTA will conduct a study to determine the feasibility of constructing the proposed facility as a toll road and financing it, in whole or in part, through the issuance of revenue bonds. Impacts owing to the possible toll designation will be addressed in the EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies; and to private organizations, citizens and residents who have previously expressed or are known to have an interest in this proposal.

It is anticipated that the project would be constructed in phases, with the initial (interim) phase(s) being of smaller scale (fewer lanes) than the ultimate facility.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. On Thursday, August 22, 2002, the TTA will conduct a public scoping meeting on the proposed SH 45 project. The meeting will be held at Popham Elementary School, 7014 Elroy Road, Del Valle, Texas. The purpose of the public meeting will be to receive comments and identify issues to be considered during development of route alternative and preparation of the EIS. Verbal and written comments may be submitted at the meeting or written comments may be submitted via regular postal mail to the FHWA or TTA at the addresses provided above. To be included in the official record of the public meeting, comments must be received by Tuesday, September 3, 2002. The meeting will begin at 6 p.m. with a one-hour ''open house''. During the open house displays showing the project area and other project information will be available for review and staff from the TTA will be available to answer questions. At 7 p.m. there will be a presentation followed by a public comment period. All interested citizens are encouraged to attend this meeting.

Persons who have special communication or accommodation needs, and who plan to attend the public meeting are asked to contact Stacey Benningfield (512/225–1351) at least two business days prior to the meeting so that accommodations may be made.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 11, 2002.

**Antonio Palacios,**

*Urban Engineer.*

[FR Doc. 02–18329 Filed 7–19–02; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA 2001–9972; Formerly FRA Docket No. 87–2; Notice No. 15]**

**RIN 2130–AB20**

### Automatic Train Control and Advanced Civil Speed Enforcement System; Northeast Corridor Railroads

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Amendment to Order of Particular Applicability requiring Advanced Civil Speed Enforcement System (ACSES) between New Haven, Connecticut and Boston, Massachusetts—New CSX Transportation (CSXT) temporary operating protocols allowing nighttime operations.

**SUMMARY:** In 1998, FRA issued an Order of Particular Applicability requiring all trains operating on the Northeast Corridor (NEC) between New Haven, Connecticut and Boston, Massachusetts (NEC—North End) to be equipped to respond to the new Advanced Civil Speed Enforcement System (ACSES). On June 26, 2002, CSXT wrote to request additional relief. After reviewing this request, and discussing it with CSXT personnel, FRA has decided to amend the Order to allow CSXT to run nighttime operations under temporary operating protocols until further notice.

**DATES:** The amendment to the Order is effective July 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** W.E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6325); Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6258); or Patricia V. Sun, Office of Chief Counsel, Mail Stop 10, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6038).

For instructions on how to use this system, visit the Docket Management System Web site (*www.dms.dot.gov*) and click on the ''Help'' menu. This docket is also available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001, during regular business hours.

**SUPPLEMENTARY INFORMATION:** The Order of Particular Applicability (Order), as published on July 22, 1998, set performance standards for cab signal/automatic train control and ACSES systems, increased certain maximum authorized train speeds, and contained safety requirements supporting improved rail service on the NEC. 63 FR 39343. Among other requirements, the Order required all trains operating on track controlled by the National Railroad Passenger Corporation (Amtrak) on the NEC—North End to be controlled by locomotives equipped to respond to ACSES by October 1, 1999. In seven subsequent notices, FRA amended the Order to reset the implementation schedule, make technical changes, and allow the use of temporary operating protocols. 64 FR 54410, October 6, 1999; 65 FR 62795, October 19, 2000; 66 FR 1718, January 9, 2001; 66 FR 34512, June 28, 2001; 66 FR 57771, November 16, 2001; 67 FR 6753, February 12, 2002, and 67 FR 14769, March 27, 2002.

On June 28, 2001, in Notice No. 11, FRA granted CSXT a relief period from the implementation schedule specified in the Order to allow CSXT additional time to complete its field testing of new

Amtrak operational software. FRA subsequently extended the relief period several times as Amtrak continued to make adjustments. The temporary operating protocols specified in paragraph 12 of this Order are no longer in effect, since the last of these extensions expired on July 1, 2002. For this reason, the temporary operating protocols specified in this amendment will be added to this Order in new paragraph 13.

The modifications contained in this amendment to the Order will run until development and testing of the operational software is complete and FRA has issued a subsequent notice. FRA is making this amendment effective upon publication instead of 30 days after the publication date in order to realize the significant safety and transportation benefits afforded by the ACSES system at the earliest possible time. All affected parties have been notified.

FRA is not reopening the comment period since the amendment to this Order is necessary to avoid disruption of rail service. Under these circumstances, delaying the effective date of the amendment to allow for notice and comment would be impracticable, unnecessary, and contrary to the public interest.

As mentioned above, the relief granted in the last amendment has expired. To prevent such recurrences, and to ensure that FRA has adequate time to consider all requests, any future requests for relief must be submitted no later than 10 working days before the requestor wishes the desired relief to take effect. FRA expects the parties to this Order to resolve any remaining issues quickly, since this is the seventh time that FRA has amended the Order to provide temporary relief from its requirements.

**New CSXT Temporary Operating Protocols**

The CSXT letter identified numerous ''problem areas'' in both the wayside and onboard portions of ACSES, with CSXT's recommended solutions. Many of the software and mechanical issues identified by CSXT have either been resolved through agreement with Amtrak or cannot be addressed by revisions to the order. One major issue, however, is CSXT's request to be allowed to continue trains operations with ACSES cut out in the event of a road failure, or a single nuisance penalty brake application. FRA will not allow this request. CSXT is in effect asking for permission to cut out ACSES en route, regardless of whether the system is on board and working as intended. FRA believes that the protection ACSES provides to high speed trains and other trains on the NEC—North End is more important than its occasional impact on freight service. However, FRA is amending the Order to reduce the impact on CSXT operations by excepting nighttime operations as CSXT requested. In this amendment, FRA also addresses CSXT's request to remove the positive stop protections at two interlockings.

*(1) Nighttime Operations*

In its June 26 letter, CSXT stated that Amtrak had agreed to allow CSXT to operate freight trains on the NEC—North End with ACSES cut out during the low-volume hours of 12:00 a.m–5:00 a.m. There are no high-speed train operations on the NEC—North End during these hours, and other passenger rail operations are very limited. This relief will allow CSXT to operate trains on the NEC—North End with ACSES cut out, without the current requirement that the Amtrak dispatcher be notified at the time of cut out.

FRA approves this request, provided that CSXT and Amtrak submit operating rules for FRA's approval before nighttime operations begin. The operating rules must indicate all the aspects and controls of these operations. This relief will continue until Amtrak has modified its software to eliminate the large number of unexpected penalty applications currently required and FRA has issued a subsequent notice rescinding the relief extended in this notice.

*(2) Retention of Positive Stop Requirements*

Currently, ACSES enforces positive stop requirements at the interlockings at Attleboro, and Mansfield, Massachusetts. In its June 26 letter, CSXT indicated that Amtrak had agreed to grant CSXT's request to remove the positive stop requirements at both interlockings, to reduce the number of penalty brake applications experienced during switching operations.

Even though Amtrak has agreed to these removals, FRA does not approve CSXT's request to remove the positive stop requirements at the Attleboro and Mansfield interlockings. The Order required Amtrak to put ACSES on high speed main tracks and tracks adjacent to them where speeds exceed 15 mph. This ACSES territory must also have perimeter protection. At the Attleboro interlocking, entry from the New Bedford Secondary is onto Track 4, a 60 mile per hour (mph) track used by cab car forward commuter trains where safety could be adversely affected by the removal of the positive stops at the east and west bound home signals. Track 4 is required both to have ACSES and to be perimeter-protected, which benefits safety on the commuter main and the adjacent high speed line. At the Mansfield interlocking, entry is onto a high-speed (150 mph) track. Here too, FRA believes that safety would be better served by retaining positive stop protection.

Accordingly, for the reasons stated in the preamble, the Final Order of Particular Applicability published at 63 FR 39343, July 22, 1998 (Order) is amended as follows:

1. The authority for the Order continues to read as follows: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

2. *Paragraph 13 is added to read as follows:*

13. *CSX Transportation (CSXT) Temporary Operating Protocols.*

Effective upon [July 22, 2002] until further notice:

CSXT may operate trains along the NEC—North End between the hours of 12 a.m. to 5 a.m. with ACSES cut out, without prior notification to the Amtrak dispatcher. This temporary relief is contingent upon FRA approval of Amtrak and CSXT operating rules concerning these operations.

Issued in Washington, DC, on July 15, 2002.

**Allan Rutter,**

*Federal Railroad Administrator.*

[FR Doc. 02–18346 Filed 7–19–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Transit Administration

## Notice of Granted Buy America Waiver

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of granted Buy America waiver.

**SUMMARY:** This waiver was granted to Webasto Thermosystems, Inc., Teleflex Thermal Technology, and Espar Products for the manufacture of an auxiliary heater to be used in bus heating systems and will allow vehicle manufacturers to count the auxiliary heater as domestic when calculating domestic content. This notice shall ensure that the public, particularly potential manufacturers, is aware of this waiver. FTA requests that the public notify it of any relevant changes in the domestic market of auxiliary heaters.

**FOR FURTHER INFORMATION CONTACT:** Meghan G. Ludtke, FTA Office of Chief

Counsel, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

**SUPPLEMENTARY INFORMATION:** The above referenced waiver is as follows:

May 15, 2002

Mr. Patrick Lock, Transit OEM Account Manager, Webasto Theromsystems Inc., 3333 John Conley Dr., Lapeer, Michigan 48446.

Mr. Scott Winton, Sales & Marketing Manager, Thermal Division, Teleflex Thermal Technology, 3831 No. 6 Road, Richmond, BC, Canada V6V 1P6.

Mr. John Dennehy, Vice President of Marketing and Communications, Espar Products, Inc., 6435 Kestrel Road, Mississauga, Ontario, Canada L5T128.

Dear Messrs. Lock, Winton, and Dennehy: This is in response to Mr. Lock's letters of March 5, 2002, and April 1, 2002, in which he requested a Buy America component waiver. The request is based on the domestic non-availability of auxiliary heaters used in bus heating systems. For the reasons below, I have determined that a waiver is appropriate here.

We received a similar request from Teleflex on July 28, 2001, which was ultimately denied. The reason for that denial was discussed in our September 28, 2001, letter. We considered the fact that the auxiliary heaters comprised a small percentage of the overall material content of the vehicle and FTA's unwillingness to create a competitive advantage where there might be more than [sic] one foreign manufacturer. In that case, no further information was provided concerning the market or other manufacturers, and therefore, we were not presented with enough information on which to base a waiver.

However, the request by Webasto contained the information needed to grant this waiver; specifically, we were given information about all known auxiliary heater manufacturers. We then verified this information with many vehicle manufacturers and were told that the three companies listed here were, in fact, the only known manufacturers of such auxiliary heaters and that all three companies supply foreign products. We are now confident that no domestic manufacturer of this product currently exists.

The Federal Transit Administration's (FTA) requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). Section 5323(j)(2)(C) contains the general requirements for the procurement of rolling stock. This section provides that when rolling stock is procured with FTA funds, the cost of the components and subcomponents produced in the United States must be at least 60 percent of the cost of the components of the rolling stock, and the vehicle must undergo final assembly in the U.S. See also, 49 CFR 661.11. Section 5323(j)(2)(B) states that those requirements shall not apply if the item is not produced in sufficient and reasonably available amounts in the U.S. See also, 49 CFR 661.7(c). The implementing regulation allows a bidder or supplier to request a non-availability waiver for a component or subcomponent of rolling stock. 49 CFR 661.7(f) and 661.9(d).

Based on the above-referenced information, I have determined that the grounds for a ''non-availability'' waiver do exist for Webasto, Teleflex, and Espar. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), the waiver is hereby granted for all contracts for auxiliary heaters entered into within two years of the date of this letter, or until such time as a domestic source for this type of product becomes available, whichever occurs first. In order to ensure that the public is aware of this waiver, particularly potential manufacturers, it will be published in the **Federal Register**.

If you have any questions, please contact Meghan G. Ludtke at (202) 366–1936.

Very truly yours,

Gregory B. McBride,
*Deputy Chief Counsel.*

Dated: Issued July 16, 2002.

**Jennifer L. Dorn,**

*Administrator.*

[FR Doc. 02–18347 Filed 7–19–02; 8:45 am]

**BILLING CODE 4910–57–M**

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

### Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

### Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on July 16, 2002.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| **New Exemption Applications** | | | |
| 11862–N | The BOC, Group Murray Hill, NJ | 4 | 8/30/2002 |
| 11927–N | Alaska Marine Lines, Inc., Seattle, WA | 4 | 8/30/2002 |
| 12381–N | Ideal Chemical & Supply Co., Memphis, TN | 4 | 8/30/2002 |
| 12412–N | Great Western Chemical Company, Portland, OR | 4 | 8/30/2002 |
| 12440–N | Luxfer Inc., Riverside, CA | 4 | 8/30/2002 |
| 12571–N | Air Products & Chemicals, Inc., Allentown, PA | 4 | 8/30/2002 |
| 12630–N | Chemetall GmbH Gesellschaft Langelsheim, DE | 4 | 8/30/2002 |
| 12648–N | Stress Engineering Services, Inc., Houston, TX | 4 | 9/30/2002 |
| 12676–N | Hawks Logistics, Edmond, OK | 4 | 9/30/2002 |
| 12701–N | Fuel Cell Components & Integrators, Inc., Hauppauge, NY | 1 | 8/30/2002 |
| 12706–N | Raufoss Composites AS, Raufoss, NO | 4 | 8/30/2002 |

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| 12715–N | Arkansas Eastman Division, Eastman Chemical Co., Batesville, AR | 4 | 8/30/2002 |
| 12718–N | Weldship Corporation, Bethlehem, PA | 4 | 8/30/2002 |
| 12751–N | Defense Technology Corporation, Casper, WY | 4 | 7/31/2002 |
| 12753–N | Praxair, Inc., Danbury, CT | 4 | 7/31/2002 |
| 12820–N | Trinity Manufacturing, Hamlet, NC | 4 | 7/31/2002 |
| 12843–N | United States Enrichment Corporation, Bethesda, MD | 4 | 8/30/2002 |
| 12845–N | Qantas Airways Limited, Los Angeles, CA | 4 | 8/30/2002 |
| 12859–N | Atlantic Research Corporation, Gainesville, VA | 4 | 8/30/2002 |
| 12867–N | G.L.I. Citergaz, 964 Civray, FR | 4 | 8/30/2002 |
| 12872–N | Southern California Edison, San Clemente, CA | 4 | 7/31/2002 |
| 12874–N | Zomeworks Corporation, Albuquerque, NM | 4 | 7/31/2002 |
| 12876–N | Asai Glass Fluoropolymers USA, Inc., Bayonne, NJ | 4 | 7/31/2002 |
| 12900–N | Syngenta Crop Protection, Inc., Greensboro, NC | 4 | 8/30/2002 |
| 12902–N | C&S Railroad Corp., Jim Thorpe, PA | 4 | 9/30/2002 |
| 12904–N | Chemex Corp., San Juan, PR | 4 | 9/30/2002 |
| 12924–N | Infineum USA LP, Linden, NJ | 4 | 8/30/2002 |
| | **Modifications to Exemptions** | | |
| 4884–M | Matheson Tri-Gas, East Rutherford, NJ | 4 | 7/31/2002 |
| 7060–M | Federal Express, Memphis, TN | 4 | 7/31/2002 |
| 7277–M | Structural Composites Industries, Pomona, CA | 4 | 7/31/2002 |
| 8162–M | Structural Composites Industries, Pomona, CA | 4 | 7/31/2002 |
| 8308–M | Tradewind Enterprises, Inc., Hillsboro, OR | 4 | 7/31/2002 |
| 8308–M | American Courier Express Corporation, Miramar, FL | 4 | 7/31/2002 |
| 8554–M | Orica USA Inc. Englewood, CO | 4 | 7/31/2002 |
| 8718–M | Structural Composites Industries, Pomona, CA | 4 | 7/31/2002 |
| 10019–M | Structural Composites Industries, Pomona, CA | 4 | 7/31/2002 |
| 10440–M | MASS Systems (A Unit of Ameron Global, Inc.), Baldwin Park, CA | 4 | 7/31/2002 |
| 11327–M | Phoenix Services, Inc., Pasadena, MD | 1 | 8/30/2002 |
| 11379–M | TRW Automotive, Occupant Safety Systems, Washington, MI | 4 | 7/31/2002 |
| 11380–M | Baker Atlas (Houston Technology Center), Houston, TX | 4 | 7/31/2002 |
| 11537–M | JCI Jones Chemicals, Inc., Milford, VA | 4 | 7/31/2002 |
| 11769–M | Great Western Chemical Company, Portland, OR | 4 | 8/30/2002 |
| 11769–M | Great Western Chemical Company, Portland, OR | 4 | 8/30/2002 |
| 11769–M | Hydrite Chemical Company, Brookfield, WI | 4 | 8/30/2002 |
| 11791–M | The Coleman Company, Inc., Wichita, KS | 4 | 7/31/2002 |
| 11850–M | Air Transport Association, Washington, DC | 4 | 8/30/2002 |
| 11911–M | Transfer Flow, Inc., Chico, CA | 4 | 8/30/2002 |
| 11911–M | Transfer Flow, Inc., Chico, CA | 4 | 8/30/2002 |
| 12065–M | Petrolab Company, Latham, NY | 4 | 7/31/2002 |
| 12449–M | Chlorine Service Company, Inc., Kingwood, TX | 4 | 7/31/2002 |
| 12599–M | Voltaix, Inc., North Branch, NJ | 4 | 7/31/2002 |

[FR Doc. 02–18348 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34223]**

### John C. Nolan—Control Exemption—Penn Eastern Rail Lines, Inc.

John C. Nolan, a noncarrier individual, has filed a verified notice of exemption to acquire control through stock ownership of Penn Eastern Rail Lines, Inc. (PRL), a Class III railroad.[1] Applicant currently controls through stock ownership another Class III railroad, East Penn Railway, Inc. (EPRY).[2]

The transaction was expected to be consummated on or shortly after July 1, 2002, the effective date of the exemption.

Applicant states that: (i) The railroads will not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).[3]

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34223, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John K. Fiorilla, 390 George Street, P.O. Box 1185, New Brunswick, NJ 08903.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: July 15, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02–18437 Filed 7–19–02; 8:45 am]

**BILLING CODE 4915–00–P**

[1] PRL is an indirect wholly owned subsidiary of Genesee & Wyoming Inc., a noncarrier holding company. PRL currently operates in eastern Pennsylvania and interchanges with CSX Transportation (CSXT) at Bristol, PA, and with Norfolk Southern Railway Company at specified points in Pennsylvania.

[2] EPRY operates in eastern Pennsylvania and interchanges with CSXT at Telford, PA.

[3] Applicant states that he intends that PRL and EPRY will be operated as separate entities.

## DEPARTMENT OF THE TREASURY

### Customs Service

### Use or Replacement of Continuous Bonds That Were Destroyed in New York

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice advises the public that importers will be afforded additional time to follow the procedures previously prescribed to ensure continuous bond coverage on future import transactions in the case of continuous bonds maintained by Customs in New York that were destroyed in the terrorist attack on September 11, 2001.

**DATES:** A copy of a current bond must be provided to Customs, or a new bond must be filed with Customs, on or before August 12, 2002.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding operational issues: The Entry and Drawback Management Branch, Office of Field Operations (202–927–0360).

*For inquiries about specific bonds:* The Customs Bond Unit, Elizabeth, New Jersey (201–443–0234). A party making a telephonic inquiry regarding a specific bond should be prepared to provide its importer name and identification number.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Customs laws and regulations require the posting of a surety bond to secure Customs transactions involving specific types of activities (for example, the importation and entry of merchandise, the custody of imported merchandise, the arrival and clearance of conveyances). A Customs bond may be approved by Customs for a particular activity involving one individual Customs transaction (for example, a single entry bond) or may be approved by Customs as a continuous bond for a particular activity involving multiple Customs transactions (for example, a continuous importation and entry bond). A single transaction bond normally is approved by Customs when presented in connection with the individual transaction to which it relates and remains in effect only for purposes of that one transaction. An application for a continuous transaction bond normally is filed with, and approved by, Customs before all of the transactions to which it relates arise, and the approved bond is retained on file by Customs and remains in effect until terminated by the parties to the bond.

The terrorist attack on the World Trade Center in New York on September 11, 2001, resulted in the destruction of Customs bonds and other documents that were being stored at the Customs offices at 6 World Trade Center. The destroyed bonds and other documents included, but were not limited to, continuous bonds which were filed for approval at the New York Seaport (port code 1001) and at the New York Regional Port (port code 7200).

On May 13, 2002, Customs published in the **Federal Register** (67 FR 32082) a general notice setting forth procedures for importers to follow in order to ensure uninterrupted bond coverage and avoid the need to file an application for a new continuous bond. That notice provided that each party having a continuous bond of any type involving activity code 1 to 5 that has an effective date of September 11, 2001, or earlier and that was filed at either of the two ports referred to above and that was in effect on the date of publication of the notice must, within 30 days of the date of publication of the notice (that is, on or before June 12, 2002), provide Customs with a copy of that bond together with the Customs bond number and copies of any riders to the bond. The notice further stated that failure to provide a copy of the bond within the prescribed 30-day period would cause Customs to refuse to accept a reference to the bond to guarantee future transactions and that, if a copy of the bond could not be provided, the party must submit to Customs a new continuous bond application within the same 30-day period. For purposes of that notice, the term ''party'' referred to any individual or business association that prior to, or on or after, September 11, 2001, had engaged in activities secured by a continuous bond described above as having been destroyed on that date, either by virtue of being listed as a ''Principal'' on the bond or by virtue of being listed as a user in ''Section III'' on the bond. Finally, the May 13, 2002, notice stated that the copy of the continuous bond or the new continuous bond application should be sent to either of the following addresses:

U.S. Customs Service, Attention: Bond Desk, 1210 Corbin Street, Elizabeth, New Jersey 07201;

or,

U.S. Customs Service, Attention: Bond Desk, Bldg. 77, JFK Airport,Jamaica, New York 11430.

**Extension of Submission Period**

Following publication of the May 13, 2002, notice, various trade associations advised Customs that additional time would be required for their members to comply with the procedures set forth in the notice. Moreover, Customs has, to date, received significantly fewer copies of bonds or new bond applications than it expected to receive. Customs therefore has determined that an additional 60 days should be allowed for submission of the prescribed bond information or a new bond application.

Accordingly, subject to the other terms and conditions of the May 13, 2002, notice as described above, Customs will continue to accept a copy of a destroyed bond or a new continuous bond application until August 12, 2002. Failure to provide a copy of a destroyed bond by that date will cause Customs to refuse to accept a reference to the bond to guarantee future transactions.

Dated: July 16, 2002.

**Jayson P. Ahern,**

*Assistant Commissioner, Office of Field Operations.*

[FR Doc. 02–18341 Filed 7–19–02; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 2002.

| LNAME | FNAME | MNAME |
|---|---|---|
| Antoniazzi | Remi | Jacgues |
| Bamberger | Harold | Eugene |
| Bartlett | Gabriela | Loretto |
| Beop Shim | Ezra | Sang |
| Burnett | Robert | Kenneth |
| Canellopoulos | Nellos | Panayotis |
| Chan | Daisy | Tak Wai |
| Chen | Christine | Tsung |
| Chen | Uelin. | |
| Chiu | Yeong | Jen |
| Cho | Byong | Un |
| Chung | Peter | Sang-Hoon |
| Cohen | Steven | Douglas |
| Cremer Jr. | Robert | Roger |
| Cuestas | Edelmira. | |
| Dimenstein | Marcel | Clifford |
| Down | Patricia | Belle |
| Farace | Alessia | D'Ecclesia |
| Farace | Arianna | D'Ecclesia |
| Firmenich | Sophie | Jocelyne |
| Fuentes | Margaret | Elizabeth |
| Gabitass | Christine | Anne |
| Gautschi | Ellen | Catherine |
| Greenall | Rita | Faye |
| Gruenhagen | Richard | Dean |
| Henry | Rosalba | Norma |
| Horie | Yuri | E |
| Hsiao | Bi-Khim | Louise |
| Janssen | Tokiko. | |
| Kaegi | Claudia | Alexandra |
| Kao | Fumei. | |
| Kim | Dong | Whan |
| Kim | Sung | Eun |
| Knight | Nicola | Ann |
| Koo | Dong | Soo |
| Lee | Hye-Won. | |
| Lee | Sammy | Wai Sum |
| Lesley | Dominique | Lisette |
| Livanos | Peter | George |
| Maurice | Ivan | Joannes Geoffroy Aime |
| McDonald | Kevin | George |
| McNair | Elizabeth | Louise |
| Merritt | Martin | Joseph |
| Miura | Kiyoshi. | |
| Niedziela | Yvone. | |
| Oresko | Robert | Craig |
| Park | Christopher | L |
| Person | Linda | Jane |
| Person | John | Michael |
| Pillet | Patrick | Louis |
| Popodi | Alfred | Ernst |
| Rietema | Jan | Clarence |
| Rule | Christopher | Marx |
| Schiemann | Helen | Hedwig |
| Schwab | Wallace | Joseph |
| Shaw | Lamar | Henry |
| Sumar | William | Saxonis |
| Sun | Bill | Kauo-Hwa |
| Thrasher | Dale | Henry |
| Todd | James | Jason |
| Velay | Heloise | Yvonne |
| Velazquez | Jose. | |
| Warren | Judith. | |
| Wibholm | Linda | Zehnder |
| Wortmann | Furman. | |
| Wuest | Lawrence | John |
| Yip | Ka Kay. | |
| Yip | Ka-Hay. | |
| Yung | Vivian | Hsu |
| Zavatti | Samuel | Mario |

Dated: June 28, 2002.

**Samuel Brown,**

*Team Manager—Examination Operation, Philadelphia Compliance Services.*

[FR Doc. 02–18326 Filed 7–19–02; 8:45 am]

**BILLING CODE 4830–01–P**

# Corrections

**Federal Register**

Vol. 67, No. 140

Monday, July 22, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 226

**RIN 0584–AC94**

### Cihld and Adult Care Food Program; Implementing Legislative Reforms to Strengthen Program Integrity

*Correction*

In rule document 02–15776 beginning on page 43448 in the issue of Thursday, June 27, 2002, make the following correction:

**§ 226.18 [Corrected]**

On page 43493, in the third column, in § 226.18, in paragraph (b)(15), in the ninth line, ''§226.6(1)(2);'' should read ''§226.6(l)(2);''

[FR Doc. C2–15776 Filed 7–19–02; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Refugee Resettlement

### Final Notice of Allocations to States of FY 2002 Funds for Refugee Social Services

*Correction*

In notice document 02–17027 beginning on page 45131 in the issue of Monday, July 8, 2002 make the following correction:

On page 45135, in table 1, under the column titled, ''Total final allocation'', in the 10th line, ''8,543,954'' should read ''18,543,954''.

[FR Doc. C2–17027 Filed 7–19–02; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2002–NM–127–AD; Amendment 39–12820; AD 2002–14–20]**

**RIN 2120–AA64**

### Airworthiness Directives; Boeing Model 737–600, –700, –800, and –900 Series Airplanes

*Correction*

In rule document 02–17548 beginning on page 46580 in the issue of Tuesday, July 16, 2002, make the following correction:

**§39.13 [Corrected]**

On page 46581, in the second column, in the second line of the Airworthiness Directive ''Docket 2002–NM–1AD'' should read ''Docket 2002–NM–127–AD''.

[FR Doc. C2–17548 Filed 7–19–02; 8:45 am]

**BILLING CODE 1505–01–D**

Federal Register

**Monday,**
**July 22, 2002**

## Part II

# Environmental Protection Agency

**40 CFR Part 63**

**National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[FRL–7236–5]**

**RIN 2060–A167 and 2060–A168**

## National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is adding two source categories, brick and structural clay products (BSCP) manufacturing and clay ceramics manufacturing, to the list of categories of major sources of hazardous air pollutants (HAP) published under section 112(c) of the Clean Air Act (CAA) and to the source category schedule for national emission standards for hazardous air pollutants (NESHAP). The two source categories being added were originally included in the clay products manufacturing source category, which was on the initial list of source categories to be regulated. The EPA is, at the same time, proposing NESHAP for new and existing sources at BSCP manufacturing facilities and NESHAP for new sources at clay ceramics manufacturing facilities. The two proposed subparts would require major sources to meet emission standards reflecting the application of maximum achievable control technology (MACT). The HAP emitted by facilities in the BSCP and clay ceramics manufacturing source categories include hydrogen fluoride (HF), hydrogen chloride (HCl), and metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium). Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and kidney damage. The EPA has classified three of the HAP as human carcinogens, four as probable human carcinogens, and one as a possible human carcinogen. We estimate that the proposed rules would reduce nationwide emissions of HAP from these facilities by approximately 2,600 megagrams per year (Mg/yr)(2,800 tons per year (tpy)), a reduction of approximately 45 percent from the current level of emissions.

**DATES:** *Comments.* Submit comments on or before September 20, 2002.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by August 12, 2002, a public hearing will be held on August 21, 2002.

**ADDRESSES:** *Comments on BSCP Manufacturing NESHAP.* By U.S. Postal Service, written comments on the proposed BSCP manufacturing NESHAP should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–30, 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–99–30, Room M–1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

*Comments on Clay Ceramics Manufacturing NESHAP.* By U.S. Postal Service, written comments on the proposed clay ceramics manufacturing NESHAP should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–2000–48, 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–2000–48, Room M–1500, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

*Public Hearing.* If a public hearing is held, it will be held at 10 a.m. on August 21, 2002 at the EPA's Environmental Research Center Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

*Docket.* Docket No. A–99–30 contains supporting information used in developing the proposed BSCP standards. Docket No. A–2000–48 contains supporting information used in developing the proposed clay ceramics standards. The dockets are 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:** For questions about the proposed rules, contact Ms. Mary Johnson, Combustion Group, Emission Standards Division (MC–C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5025, e-mail address: *johnson.mary@epa.gov.* For questions about the public hearing, contact Ms. Tanya Medley, Minerals and Inorganic Chemicals Group, Emission Standards Division (MC–C504–05), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5422, e-mail address: *medley.tanya@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Comments.* Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–99–30 for BSCP manufacturing and A–2000–48 for clay ceramics manufacturing. 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: OAQPS Document Control Officer, MC–C404–02, Attention: Ms. Mary Johnson, U.S. EPA, Research Triangle Park, North Carolina 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 the 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. Tanya Medley at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Medley to verify the time, date, and location of the hearing. The address, telephone number, and e-mail address for Ms. Medley are listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. If a public hearing is held, it will provide interested parties

the opportunity to present data, views, or arguments concerning these proposed emission standards.

*Docket.* The dockets are organized and complete files of all the information considered by the EPA in the development of the proposed rules. The dockets are dynamic files 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 rules and their preambles, the contents of the dockets will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to the proposed rules are available for review in the dockets, or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

*Worldwide Web (WWW).* In addition to being available in the dockets, an electronic copy of each proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of each rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *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.* Entities potentially regulated by this action are those industrial facilities that manufacture BSCP and clay ceramics. Brick and structural clay products manufacturing is classified under Standard Industrial Classification (SIC) codes 3251, Brick and Structural Clay Tile; 3253, Ceramic Wall and Floor Tile; and 3259, Other Structural Clay Products. The North American Industry Classification System (NAICS) codes for BSCP manufacturing are 327121, Brick and Structural Clay Tile; 327122, Ceramic Wall and Floor Tile Manufacturing; and 327123, Other Structural Clay Products. Clay ceramics manufacturing is classified under SIC codes 3253, Ceramic Wall and Floor Tile; and 3261, Vitreous Plumbing Fixtures (Sanitaryware). The NAICS codes for clay ceramics manufacturing are 327122, Ceramic Wall and Floor Tile Manufacturing; and 327111, Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing. Regulated categories and entities are shown in Table 1 of this preamble.

TABLE 1.—REGULATED CATEGORIES AND ENTITIES

| Category | SIC | NAICS | Examples of potentially regulated entities |
|---|---|---|---|
| Industrial | 3251 | 327121 | Brick and structural clay tile manufacturing facilities (BSCP NESHAP) |
| Industrial | 3253 | 327122 | Ceramic wall and floor tile manufacturing facilities (Clay Ceramics NESHAP) and extruded tile manufacturing facilities (BSCP NESHAP) |
| Industrial | 3259 | 327123 | Other structural clay products manufacturing facilities (BSCP NESHAP) |
| Industrial | 3261 | 327111 | Vitreous plumbing fixtures (sanitaryware) manufacturing facilities (Clay Ceramics NESHAP) |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.8385 of the proposed BSCP rule and § 63.8535 of the proposed clay ceramics 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.

*Outline.* The information presented in this preamble is organized as follows:

I. Introduction
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What is the history of the source categories?
D. What are the health effects of pollutants emitted from the brick and structural clay products manufacturing and clay ceramics manufacturing source categories?
II. Summary of the Proposed Rule for Brick and Structural Clay Products Manufacturing
A. What source category is regulated by the proposed rule?
B. What are the affected sources?
C. When must I comply with the proposed rule?
D. What are the emission limits?
E. What are the operating limits?
F. What are the performance test and initial compliance requirements?
G. What are the continuous compliance requirements?
H. What are the notification, recordkeeping, and reporting requirements?
III. Summary of Environmental, Energy, and Economic Impacts for the Proposed Brick and Structural Clay Products Manufacturing NESHAP
A. What are the air quality impacts?
B. What are the water and solid waste impacts?
C. What are the energy impacts?
D. Are there any additional environmental and health impacts?
E. What are the cost impacts?
F. How can we reduce the cost of the proposed rule?
G. What are the economic impacts?
IV. Rationale for Selecting the Proposed Standards for Brick and Structural Clay Products Manufacturing
A. How did we select the emission sources and pollutants that will be regulated?
B. How did we determine subcategories?
C. How did we determine the MACT floors for existing sources?
D. How did we determine the MACT floors for new sources?
E. How did we select the format of the proposed rule?
F. How did we determine the emission limits?
G. How did we select the operating limits and monitoring requirements?
V. Summary of the Proposed Rule for Clay Ceramics Manufacturing
A. What source category is regulated by the proposed rule?
B. What are the affected sources?
C. When must I comply with the proposed rule?
D. What are the emission limits?
E. What are the operating limits?
F. What are the performance test and initial compliance requirements?
G. What are the continuous compliance requirements?
H. What are the notification, recordkeeping, and reporting requirements?
VI. Summary of Environmental, Energy, and Economic Impacts for the Proposed Clay Ceramics Manufacturing NESHAP
A. What are the air quality impacts?
B. What are the water and solid waste impacts?
C. What are the energy impacts?
D. Are there any additional environmental and health impacts?
E. What are the cost impacts?
F. What are the economic impacts?

VII. Rationale for Selecting the Proposed Standards for Clay Ceramics Manufacturing
A. How did we select the emission sources and pollutants that will be regulated?
B. How did we determine subcategories?
C. How did we determine the MACT floors for existing sources?
D. How did we determine the MACT floors for new sources?
E. How did we select the format of the proposed rule?
F. How did we determine the emission limits?
G. How did we select the operating limits and monitoring requirements?
VIII. Solicitation of Comments and Public Participation
IX. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks
C. Executive Order 13132, Federalism
D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
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, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995

## I. Introduction

### *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 and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those stationary sources or groups of stationary sources that are located within a contiguous area under common control that emit or have the potential to emit, considering controls, 9.07 Mg/yr (10 tpy) or more of any one HAP or 22.68 Mg/yr (25 tpy) or more of any combination of HAP. Area sources are those stationary sources or groups of stationary sources that are not major sources.

### *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 and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements.

### *C. What Is the History of the Source Categories?*

We published an initial list of source categories on July 16, 1992 (57 FR 31576). Included on the initial source category list were major sources of HAP emissions from the clay products manufacturing industry.

Early in the regulatory development process, four distinct industries were identified within the clay products manufacturing source category. In a notice published in the **Federal Register** on November 18, 1999 (64 FR 63025), we stated that we anticipated replacing the clay products manufacturing source category with four separate source categories representing those four industries: BSCP manufacturing, ceramics manufacturing, clay minerals processing, and lightweight aggregate manufacturing. We further stated that we expected to propose and promulgate separate MACT standards for each of the anticipated four source categories, and that the proposal for each of the standards would add the new source category to the source category list (64 FR 63028).

After further consideration, we have decided to propose and promulgate MACT standards for only two of the four anticipated source categories: BSCP manufacturing and clay ceramics manufacturing. These two categories are included in this action. The similarity of affected sources and types of HAP emissions within these two categories provides the opportunity to propose rules for both industries under one action. Consequently, today's action replaces the clay products manufacturing source category on the source category list with BSCP manufacturing and clay ceramics manufacturing. At this time, we do not anticipate proposing and promulgating MACT standards for the clay minerals processing and lightweight aggregate manufacturing industries. Because we have not added those industries to the source category list, we need not take formal action to remove them from the list. However, we are providing notice of our current plans here so that interested persons have an opportunity to comment.

### *D. What Are the Health Effects of Pollutants Emitted From the Brick and Structural Clay Products Manufacturing and Clay Ceramics Manufacturing Source Categories?*

Today's proposed rules protect air quality and promote the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. Emissions data collected during development of the proposed rules show that HF, HCl, and metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium) are emitted from BSCP and clay ceramics manufacturing facilities. Exposure to these HAP is associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.,* irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and damage to the kidneys), and acute health disorders (*e.g.,* lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the kidney and central nervous system). We have classified three of the HAP as human carcinogens, four as probable human carcinogens, and one as a possible human carcinogen. 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, today's proposed rules would reduce emissions and subsequent exposures.

#### 1. Hydrogen Fluoride

Acute (short-term) inhalation exposure to gaseous HF can cause severe respiratory damage in humans,

including severe irritation and pulmonary edema. Chronic (long-term) exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride may cause dental fluorosis or mottling, while very high exposures through drinking water or air can result in crippling skeletal fluorosis. One study reported menstrual irregularities in women occupationally exposed to fluoride. We have not classified HF for carcinogenicity.

2. Hydrogen Chloride

Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes. Acute (short-term) inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic (long-term) occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. We have not classified HCl for carcinogenicity.

3. Antimony

Acute (short-term) exposure to antimony by inhalation in humans results in effects on the skin and eyes. Respiratory effects, such as inflammation of the lungs, chronic bronchitis, and chronic emphysema, are the primary effects noted from chronic (long-term) exposure to antimony in humans via inhalation. Human studies are inconclusive regarding antimony exposure and cancer, while animal studies have reported lung tumors in rats exposed to antimony trioxide via inhalation. We have not classified antimony for carcinogenicity.

4. Arsenic

Acute (short-term) high-level inhalation exposure to arsenic dust or fumes has resulted in gastrointestinal effects (nausea, diarrhea, abdominal pain), and central and peripheral nervous system disorders. Chronic (long-term) inhalation exposure to inorganic arsenic in humans is associated with irritation of the skin and mucous membranes. Human data suggest a relationship between inhalation exposure of women working at or living near metal smelters and an increased risk of reproductive effects, such as spontaneous abortions. Inorganic arsenic exposure in humans by the inhalation route has been shown to be strongly associated with lung cancer, while ingestion of inorganic arsenic in humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. We have classified inorganic arsenic as a Group A, human carcinogen.

5. Beryllium

Acute (short-term) inhalation exposure to high levels of beryllium has been observed to cause inflammation of the lungs or acute pneumonitis (reddening and swelling of the lungs) in humans; after exposure ends, these symptoms may be reversible. Chronic (long-term) inhalation exposure of humans to beryllium has been reported to cause chronic beryllium disease (berylliosis), in which granulomatous (noncancerous) lesions develop in the lung. Inhalation exposure to beryllium has been demonstrated to cause lung cancer in rats and monkeys. Human studies are limited, but suggest a causal relationship between beryllium exposure and an increased risk of lung cancer. We have classified beryllium as a Group B1, probable human carcinogen.

6. Cadmium

The acute (short-term) effects of cadmium inhalation in humans consist mainly of effects on the lung, such as pulmonary irritation. Chronic (long-term) inhalation or oral exposure to cadmium leads to a build-up of cadmium in the kidneys that can cause kidney disease. Cadmium has been shown to be a developmental toxicant in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. An association between cadmium exposure and an increased risk of lung cancer has been reported from human studies, but these studies are inconclusive due to confounding factors. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium. We have classified cadmium as a Group B1, probable human carcinogen.

7. Chromium

Chromium may be emitted in two forms, trivalent chromium (chromium III) or hexavalent chromium (chromium VI). The respiratory tract is the major target organ for chromium VI toxicity, for acute (short-term) and chronic (long-term) inhalation exposures. Shortness of breath, coughing, and wheezing have been reported from acute exposure to chromium VI, while perforations and ulcerations of the septum, bronchitis, decreased pulmonary function, pneumonia, and other respiratory effects have been noted from chronic exposure. Limited human studies suggest that chromium VI inhalation exposure may be associated with complications during pregnancy and childbirth, while animal studies have not reported reproductive effects from inhalation exposure to chromium VI. Human and animal studies have clearly established that inhaled chromium VI is a carcinogen, resulting in an increased risk of lung cancer. We have classified chromium VI as a Group A, human carcinogen.

Chromium III is much less toxic than chromium VI. The respiratory tract is also the major target organ for chromium III toxicity, similar to chromium VI. Chromium III is an essential element in humans, with a daily intake of 50 to 200 micrograms per day (μg/d) recommended for an adult. The body can detoxify some amount of chromium VI to chromium III. We have not classified chromium III for carcinogenicity.

8. Cobalt

Acute (short-term) exposure to high levels of cobalt by inhalation in humans and animals results in respiratory effects such as a significant decrease in ventilatory function, congestion, edema, and hemorrhage of the lung. Respiratory effects are also the major effects noted from chronic (long-term) exposure to cobalt by inhalation, with respiratory irritation, wheezing, asthma, pneumonia, and fibrosis noted. Cardiac effects, congestion of the liver, kidneys, and conjunctiva, and immunological effects have also been noted in humans. Cobalt is an essential element in humans, as a constituent of vitamin B12. Human and animal studies are inconclusive with respect to potential carcinogenicity of cobalt. We have not classified cobalt for carcinogenicity.

9. Mercury

Mercury exists in three forms: Elemental mercury, inorganic mercury compounds (primarily mercuric chloride), and organic mercury compounds (primarily methyl mercury). Each form exhibits different health effects. Brick, structural clay products, and clay ceramics manufacturing may release elemental or inorganic mercury, but not methyl mercury so those health effects are not addressed in this preamble. Acute (short-term) exposure to high levels of elemental mercury in humans results in central nervous system (CNS) effects such as tremors,

mood changes, and slowed sensory and motor nerve function. High inhalation exposures can also cause kidney damage and effects on the gastrointestinal tract and respiratory system. Chronic (long-term) exposure to elemental mercury in humans also affects the CNS, with effects such as increased excitability, irritability, excessive shyness, and tremors. We have not classified elemental mercury for carcinogenicity.

Acute exposure to inorganic mercury by the oral route may result in effects such as nausea, vomiting, and severe abdominal pain. The major effect from chronic exposure to inorganic mercury is kidney damage. Reproductive and developmental animal studies have reported effects such as alterations in testicular tissue, increased embryo resorption rates, and abnormalities of development. Mercuric chloride (an inorganic mercury compound) exposure has been shown to result in forestomach, thyroid, and renal tumors in experimental animals. We have classified mercuric chloride as a Group C, possible human carcinogen.

10. Manganese

Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic (long-term) exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day (mg/d). Chronic exposure to high levels of manganese by inhalation in humans results primarily in CNS effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. We have classified manganese as Group D, not classifiable as to human carcinogenicity.

11. Nickel

Nickel is an essential element in some animal species, and it has been suggested it may be essential for human nutrition. Nickel dermatitis, consisting of itching of the fingers, hands, and forearms, is the most common effect in humans from chronic (long-term) skin contact with nickel. Respiratory effects have also been reported in humans from inhalation exposure to nickel. No information is available regarding the reproductive or developmental effects of nickel in humans, but animal studies have reported such effects. Human and animal studies have reported an increased risk of lung and nasal cancers from exposure to nickel refinery dusts and nickel subsulfide. Animal studies of soluble nickel compounds (i.e., nickel carbonyl) have reported lung tumors. We have classified nickel refinery dust and nickel subsulfide as Group A, human carcinogens, and nickel carbonyl as a Group B2, probable human carcinogen.

12. Lead

Lead is a very toxic element, causing a variety of effects at low dose levels. Brain damage, kidney damage, and gastrointestinal distress may occur from acute (short-term) exposure to high levels of lead in humans. Chronic (long-term) exposure to lead in humans results in effects on the blood, CNS, blood pressure, and kidneys. Children are particularly sensitive to the chronic effects of lead, with slowed cognitive development, reduced growth, and other effects reported. Reproductive effects, such as decreased sperm count in men and spontaneous abortions in women, have been associated with lead exposure. The developing fetus is at particular risk from maternal lead exposure, with low birth weight and slowed postnatal neurobehavioral development noted. Human studies are inconclusive regarding lead exposure and cancer, while animal studies have reported an increase in kidney cancer from lead exposure by the oral route. We have classified lead as a Group B2, probable human carcinogen.

13. Selenium

Selenium is a naturally occurring substance that is toxic at high concentrations but is also a nutritionally essential element. Acute (short-term) exposure to elemental selenium, hydrogen selenide, and selenium dioxide by inhalation results primarily in respiratory effects, such as irritation of the mucous membranes, pulmonary edema, severe bronchitis, and bronchial pneumonia. Studies of humans chronically (long-term) exposed to high levels of selenium in food and water have reported discoloration of the skin, pathological deformation and loss of nails, loss of hair, excessive tooth decay and discoloration, lack of mental alertness, and listlessness. The consumption of high levels of selenium by pigs, sheep, and cattle has been shown to interfere with normal fetal development and to produce birth defects. Results of human and animal studies suggest that supplementation with some forms of selenium may result in a reduced incidence of several tumor types. One selenium compound, selenium sulfide, is carcinogenic in animals exposed orally. We have classified elemental selenium as a Group D, not classifiable as to human carcinogenicity, and selenium sulfide as a Group B2, probable human carcinogen.

## II. Summary of the Proposed Rule for Brick and Structural Clay Products Manufacturing

### *A. What Source Category Is Regulated by the Proposed Rule?*

Today's proposed rule for BSCP manufacturing applies to BSCP manufacturing facilities that are, are located at, or are part of, a major source of HAP emissions. The BSCP manufacturing source category includes those facilities that manufacture brick (face brick, structural brick, brick pavers, other brick); clay pipe; roof tile; extruded floor and wall tile; and/or other extruded, dimensional clay products. Brick and structural clay products primarily are produced from common clay and shale. Production of BSCP typically consists of processing and handling the raw materials, forming and cutting bricks and shapes, and drying and firing the bricks and shapes. One by-product of brick manufacturing is crushed brick, which is produced at some facilities by crushing reject bricks.

There are a total of 189 domestic BSCP manufacturing facilities; 170 of these facilities primarily produce brick, and 19 of these facilities primarily produce structural clay products. The 189 BSCP manufacturing facilities are located in 39 States and are owned by 90 companies. Seventy-seven of the companies are small businesses, and these 77 companies own 93 of the BSCP manufacturing facilities. Thirteen of the companies are large businesses, and these 13 companies own 96 BSCP manufacturing facilities.

All BSCP are fired either in continuous (tunnel or roller) or batch (periodic) kilns. Because the vast majority of continuous kilns are tunnel kilns, continuous kilns, including roller kilns, will be referred to as tunnel kilns for the remainder of this preamble. A total of 308 permitted and operable tunnel kilns were reported by industry; 296 of these kilns are located at facilities that are estimated, based on uncontrolled emissions, to be major sources. Of the 296 tunnel kilns located at major sources, 269 are located at brick manufacturing facilities and 27 are located at structural clay products manufacturing facilities. A total of 227 permitted and operable periodic kilns

were reported by industry; 164 of these kilns are located at facilities that are estimated to be major sources. Of the 164 periodic kilns located at major sources, 81 are located at brick manufacturing facilities and 83 are located at structural clay products manufacturing facilities.

Most tunnel kilns are fired with natural gas, although coal, sawdust, landfill gas, and fuel oil also are used. Many kilns have propane available as a back-up fuel. Most of the sawdust-fired tunnel kilns duct some or all of the kiln exhaust to rotary sawdust dryers prior to release to the atmosphere. Tunnel kilns range in size from about 104 meters (m) (340 feet (ft)) to 152 m (500 ft) in length and include a dryer, a firing zone, and a cooling zone. The dryer can be a totally separate structure from the tunnel kiln or can be in-line (part of the tunnel kiln). In tunnel kilns with in-line dryers, the dryer and kiln exhaust fans are balanced so that kiln combustion gases do not enter the dryer. A neutral point, created by the draft from the dryer and the kiln, separates the dryer and kiln atmospheres. A similar neutral point also exists between the firing and cooling zones of all tunnel kilns. Some dryers that precede coal-fired kilns use kiln gases to aid in the drying process. This process is called back-drafting and is accomplished by changing the balance between the dryer and kiln exhaust fans so that the dryer/kiln neutral point moves into the kiln and allows some combustion gases to enter the dryer. Tunnel kiln firing zones typically maintain a maximum temperature of about 1090°C (2000°F). Production rates for tunnel kilns averaged about 5.7 megagrams per hour (Mg/hr) (6.3 tons per hour (tph)) in 1996. During firing, small amounts of excess fuel, typically natural gas, are sometimes introduced to the kiln atmosphere, creating a reducing atmosphere that adds color to the surface of the bricks. This process is called flashing. After firing, the bricks enter the cooling zone, where they are cooled to near ambient temperatures before leaving the tunnel kiln. The bricks then are removed from the kiln cars, stored, and shipped.

Periodic kilns are the most common type of kiln for firing clay pipe and are also used to produce brick and other structural clay products. Types of periodic kilns that are used in the BSCP industry include beehive kilns and shuttle kilns. Beehive kilns are round, brick structures in which bricks or structural clay products are manually loaded or stacked. Shuttle kilns typically are steel-framed, refractory-lined structures that are loaded with brick or structural clay product-laden kiln cars. Following loading, periodic kilns are fired for a set amount of time, depending on the product. Firing cycles for brick range from 40 hours to about 200 hours. Firing cycles for structural clay products vary over a much wider range (16 hours to about 700 hours) because the sizes of the products vary over a wide range. The average production rate for periodic kilns in the industry is less than 0.5 tph (on a continuous basis). Structural clay tile that are fired in periodic kilns typically require relatively short firing cycles, while large clay pipe typically require hundreds of hours. Facilities that use periodic kilns typically operate several kilns, and groups or banks of periodic kilns often are ducted to a single stack. Most periodic kilns are fired with natural gas, while a few periodic kilns are fired with coal or sawdust.

The primary HAP emissions sources at BSCP manufacturing plants are tunnel kilns and periodic kilns, which emit HF, HCl, and HAP metals. Kilns also emit particulate matter (PM) and sulfur dioxide ($SO_2$). Other sources of HAP emissions at BSCP manufacturing plants are the raw material processing and handling equipment. The air pollution control devices (APCD) that are used by the industry to control emissions from kilns include dry lime injection fabric filters (DIFF), dry lime scrubber/fabric filters (DLS/FF), dry limestone adsorbers (DLA), wet scrubbers (WS), and fabric filters. The following paragraphs describe the control systems.

Dry lime injection fabric filters are used to control HF, HCl, $SO_2$, and PM emissions from tunnel kilns. These systems inject hydrated lime (a dry lime powder) into the kiln exhaust. The lime and kiln exhaust mix in a reaction chamber or an exhaust duct and are ducted to a fabric filter. Acid gas removal takes place in the exhaust duct or reaction chamber and subsequent ductwork, and across the lime-caked fabric filter bags. The fabric filter then removes the lime and other PM from the exhaust stream prior to release to the atmosphere. The spent lime and PM collected by the fabric filter are then disposed of as solid waste. One facility ships the lime to a landfill where it is used to solidify liquid hazardous waste. The facility does not have to pay for spent lime disposal (other than shipping costs) because the lime is useful to the landfill.

Dry lime scrubber/fabric filters are also used to control HF, HCl, $SO_2$, and PM emissions from tunnel kilns. These systems mix fresh hydrated lime, re-circulated hydrated lime, and a small amount of water in a conditioning drum. The lime/water mixture then is injected into a reaction chamber where it mixes with the kiln exhaust. Acid gas removal takes place in the reaction chamber, subsequent ductwork, and across the lime-caked fabric filter bags. Additionally, the hot exhaust gases from the kiln evaporate the water in the lime/water mixture, thereby cooling the exhaust gases before entering the fabric filter. From the reaction chamber, the exhaust stream is ducted to a fabric filter for PM removal, and a percentage of the fabric filter catch is reintroduced into the conditioning drum along with fresh lime and water.

Dry limestone adsorbers are also used to control tunnel kiln emissions. These systems feed limestone into the top of a reaction chamber countercurrent to the kiln exhaust gases. The limestone cascades through multiple baffles within the chamber and reacts with and removes HF, and, to a lesser degree, HCl and $SO_2$ from the kiln exhaust. The system does not provide a mechanism for controlling PM and may actually create PM emissions in some instances. Depending on the system, the limestone is then pneumatically conveyed directly back to the top of the chamber or is mechanically processed (scraped) to remove reacted material from the surface and then pneumatically conveyed back to the top of the reaction chamber. New limestone is periodically added to the system as needed. We have several concerns, which are discussed in section IV.B of this preamble, with the DLA control technology.

Attempts are currently under way to control a periodic kiln with a DLA, but based on available test data and discussions with the facility manager, the system has not been successful in controlling HF emissions from the kiln. The facility is continuing efforts to solve the problems with the APCD, but at this point, the DLA has not been proven effective for controlling emissions from periodic kilns.

Wet scrubbers are also used to control HF, HCl, $SO_2$, and PM emissions from tunnel kilns. One type of WS system currently in use is a vertical, packed-tower scrubber. This system first quenches the exhaust gases with a soda-ash and water solution. The exhaust gases then pass through 5 feet of random dump packing followed by a demister. The soda-ash and water solution is also added to the top of the packing material, countercurrent to the gas flow. The other WS currently in use, which recently began operation, is a fluidized bed scrubber that uses water and sodium hydroxide as the scrubbing solution. Test data documenting the

performance of the fluidized bed scrubber are not yet available. The facility that is currently operating wet scrubbers discharges the scrubber wastewater directly to the sewer. This water disposal option is not available to all facilities, but some facilities have indicated that they would have similar disposal options.

In addition, another type of wet scrubber system has been developed specifically for the brick industry. The system is a cross-flow scrubber that includes the addition of magnesium hydroxide ($Mg(OH)_2$) to the scrubber water. The $Mg(OH)_2$ reacts with HF, HCl, and $SO_2$ to form several salts, including magnesium fluoride ($MgF_2$), magnesium chloride ($MgCl_2$), and magnesium sulfate ($MgSO_4$). A pilot-scale test of the system reportedly showed HF control efficiencies greater than 99 percent, $SO_2$ control efficiencies greater than 95 percent, and PM concentrations lower than 0.023 grams per dry standard cubic meter (g/dscm) (0.1 grains per dry standard cubic foot (gr/dscf)). The testing did not include measurements of HCl emissions. The system can be designed to discharge directly to a sewer if available or can include a spray dryer (*i.e.*, evaporator) to eliminate the liquid waste.

*B. What Are the Affected Sources?*

The existing affected source, which is the portion of each source in the category for which we are setting emission standards, is any existing tunnel kiln with a design capacity equal to or greater than 9.07 Mg/hr (10 tph) of fired product. Such tunnel kilns may be fired by natural gas or other fuels, including sawdust. Sawdust firing typically involves the use of a sawdust dryer because sawdust typically is purchased wet and needs to be dried before it can be used as fuel. Consequently, some sawdust-fired tunnel kilns have two process streams, including: a process stream that exhausts directly to the atmosphere or to an APCD, and a process stream in which the kiln exhaust is ducted to a sawdust dryer where it is used to dry sawdust before being emitted to the atmosphere.

Today's proposed rule focuses on those process streams from existing tunnel kilns that exhaust directly to the atmosphere or to an APCD. For existing tunnel kilns at or above the threshold design capacity that do not have sawdust dryers, the kiln exhaust process stream (i.e., the only process stream) is subject to the requirements of today's proposed rule. In accordance with CAA section 112(d)(1), we have divided tunnel kilns that duct exhaust to sawdust dryers into two classes for purposes of regulation. For existing tunnel kilns at or above the threshold design capacity that duct exhaust to sawdust dryers prior to July 22, 2002, only the process stream that is emitted directly to the atmosphere or to an APCD is subject to the requirements of today's proposed rule; any process stream from such kilns that is ducted to a sawdust dryer is not subject to those requirements.

By contrast, for existing tunnel kilns at or above the threshold design capacity that first duct exhaust to sawdust dryers on or after July 22, 2002, all of the exhaust (i.e., both the process stream that is emitted directly to the atmosphere or to an APCD and the process stream that is ducted to a sawdust dryer) is subject to the same level of control requirement as a new tunnel kiln. It is important to regulate all of the exhaust from this subset of existing tunnel kilns in order to prevent existing tunnel kilns that do not duct exhaust to sawdust dryers prior to July 22, 2002 from circumventing the control requirements of today's proposed rule by ducting to sawdust dryers. It also makes sense to subject all of the exhaust from kilns that first duct exhaust to sawdust dryers on or after July 22, 2002 to the requirements of today's proposed rule because these sources, like new sources, have options for controlling their emissions that are not as readily available to existing sources. Thus, the cost of requiring MACT for sources that choose to first duct kiln exhaust to a sawdust dryer on or after July 22, 2002 is considered reasonable.

In addition, each new or reconstructed tunnel kiln is an affected source, regardless of design capacity, and all process streams from new or reconstructed tunnel kilns are subject to the requirements of today's proposed rule. A source is a new affected source if construction began after July 22, 2002. An affected source is reconstructed if the criteria defined in § 63.2 are met. An affected source is existing if it is not new or reconstructed.

An existing tunnel kiln with a federally enforceable permit condition that restricts kiln operation to less than 9.07 Mg/hr (10 tph) of fired product on a 30-day rolling average basis is not subject to the requirements of today's proposed rule. Kilns that are used exclusively for research and development (R&D) and not used to manufacture products for commercial sale are not subject to the requirements of today's proposed rule. Finally, kilns that are used exclusively for setting glazes on previously fired products are not subject to the requirements of today's proposed rule.

*C. When Must I Comply With the Proposed Rule?*

Existing affected sources must comply within 3 years of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. New or reconstructed affected sources with an initial startup before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] must comply no later than [Date of Publication of the Final Rule in the **Federal Register**]. New or reconstructed affected sources with an initial startup after [Date of Publication of the Final Rule in the **Federal Register**] must comply upon initial startup. Existing area sources that subsequently become major sources have 3 years from the date they become major sources to come into compliance. Any portion of existing facilities that become new or reconstructed major sources and any new or reconstructed area sources that become major sources must be in compliance upon initial startup.

*D. What Are the Emission Limits?*

Today's proposed rule includes emission limits in the form of production-based mass emission limits and percent reduction requirements. In establishing the HAP emission limits, we selected PM as a surrogate for HAP metals (including mercury in particulate form). Today's proposed rule proposes HF, HCl, and PM emission limits for existing, new, and reconstructed affected sources at BSCP manufacturing facilities.

If you own or operate an existing tunnel kiln with a design capacity equal to or greater than 9.07 Mg/hr (10 tph) or a new or reconstructed tunnel kiln, regardless of capacity, you would be required to meet an HF emission limit of 0.014 kilogram per megagram (kg/Mg) (0.027 pound per ton (lb/ton)) of product or reduce uncontrolled HF emissions by at least 95 percent for affected process streams. You would be required to meet an HCl emission limit of 0.019 kg/Mg (0.037 lb/ton) of product or reduce uncontrolled HCl emissions by at least 90 percent. You would be required to meet a PM emission limit of 0.06 kg/Mg (0.12 lb/ton) of product.

*E. What Are the Operating Limits?*

In addition to the emission limits, today's proposed rule includes operating limits that would apply to APCD used to comply with the proposed rule. The operating limits require you to maintain certain process or APCD parameters within levels

established during performance tests. Each facility affected by the proposed rule would be required to prepare, implement, and revise, as necessary, an operation, maintenance, and monitoring (OM&M) plan. The OM&M plan generally specifies the operating parameters that will be monitored; the frequency that parameter values will be determined; the limits for each parameter; procedures for proper operation and maintenance of process units, APCD, and monitoring equipment; procedures for responding to parameter deviations; and procedures for documenting compliance.

We have established operating limits for DIFF (dry lime injection fabric filters), DLS/FF (dry lime scrubbers/fabric filters), and WS (wet scrubbers). If you operate a DIFF or DLS/FF, you would be required to initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions according to your OM&M plan, operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month reporting period, and maintain the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature, plus 14°C (25°F), established during your performance test. You would be required to maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems and maintain the feeder setting at or above the level established during your performance test. If you operate a DLS/FF, you would be required to maintain the average water injection rate for each 3-hour block period at or above the level established during your performance test.

If you operate a WS (wet scrubber), you would be required to maintain the average scrubber pressure drop, the average scrubber liquid pH, the average scrubber liquid flow rate, and the average chemical addition rate, if applicable, for each 3-hour block period at or above the average values established during your performance test.

If you own or operate an affected source equipped with an alternative APCD or technique not listed in the proposed rule, you would establish operating limits for the appropriate operating parameters subject to prior written approval by the Administrator as described in 40 CFR 63.8(f). You would be required to submit a request for approval of alternative monitoring procedures that includes a description of the alternative APCD or technique, the type of monitoring device or procedure that would be used, the appropriate operating parameters that would be monitored, and the frequency that the operating parameter values would be determined and recorded. You would establish site-specific operating limits during your performance test based on the information included in the approved alternative monitoring procedures request. You would be required to install, operate, and maintain the parameter monitoring system for the alternative APCD or technique according to your OM&M plan. If the Administrator determines that parameter monitoring cannot assure continuous compliance, a continuous emission monitoring system (CEMS) to measure HF and/or HCl emissions may be required.

If a facility applies for the approval of alternative monitoring procedures, including operating parameters, long-term APCD performance is an important consideration. Some of the new APCD that are being developed for controlling HF, HCl, and PM from brick kilns are similar to DIFF and DLS/FF, but they use different dry media, such as crushed limestone, sodium bicarbonate, and possibly other materials. One system uses powdered limestone as a primary sorbent, followed by lesser amounts of hydrated lime and sodium bicarbonate, each in a different reaction chamber. This type of system is designed to minimize sorbent costs by using the least expensive sorbent for primary control and using more expensive (and effective) sorbents to provide additional acid gas removal. The proposed operating limits for DIFF are appropriate for these DIFF-type systems, but the limits will require some modification to address specific design differences, such as the use of multiple sorbents.

We are soliciting comment on requiring the application of PM CEMS as a method to assure continuous compliance with the proposed PM emission limits for BSCP tunnel kilns. Specifically, we are soliciting comment on the relation of a PM CEMS requirement to the PM emission limits that are proposed today. This includes the level and averaging time of a CEMS-based PM emission limit and the methodology for deriving the limit from the available data for BSCP tunnel kilns.

We have continued to learn about the capabilities and performance of PM CEMS through performing and witnessing field evaluations and through discussions with our European counterparts. We believe there is sound evidence that PM CEMS should work on BSCP tunnel kilns.

We intend to propose revisions to the performance specification for PM CEMS (Performance Specification 11 (PS–11), 40 CFR part 60, appendix B, and Procedure 2, 40 CFR part 60, appendix F) in the near future with subsequent promulgation.

*F. What Are the Performance Test and Initial Compliance Requirements?*

We are requiring owners and operators of all affected sources to conduct an initial performance test using specified EPA test methods to demonstrate initial compliance with the emission limits. A performance test must be conducted before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test, as well as when an operating limit parameter value is being revised. You would test at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources. If meeting the percent reduction emission limits for HF or HCl, you would test at the APCD inlet. Under the proposed rule, you must conduct each test while operating at the maximum production level.

Under the proposed rule, you would be required to measure emissions of HF, HCl, and PM. You would measure HF and HCl emissions using EPA Reference Method 26A, ''Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources-Isokinetic Method,'' 40 CFR part 60, appendix A, or any other alternative method that has been approved by the Administrator under 40 CFR 63.7(f) of the general provisions. The EPA Reference Method 26, ''Determination of Hydrogen Chloride Emissions from Stationary Sources,'' 40 CFR part 60, appendix A, may be used when no acid particulate matter (*e.g.,* HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present. Particulate matter emissions would be measured using EPA Reference Method 5, ''Determination of Particulate Emissions from Stationary Sources,'' 40 CFR part 60, appendix A, or any other approved alternative method.

To determine initial compliance with the production-based mass emission limits for HF, HCl, and PM, you would calculate the mass emissions per unit of production for each test run using the mass emission rates of HF, HCl, and PM and the production rate (on a fired-product basis) measured during your performance test. To determine initial compliance with any of the percent reduction emission limits, you would calculate the percent reduction for each test run using the mass emission rates, measured during your performance test,

of the specific HAP (HF or HCl) entering and exiting the APCD.

Prior to your initial performance test, you would be required to install the continuous monitoring system (CMS) (*e.g.,* continuous parameter monitoring system) equipment to be used to demonstrate continuous compliance with the operating limits. During your initial test, you would use the CMS to establish site-specific operating parameter values that represent your operating limits. If you operate a DIFF or DLS/FF, you would be required to continuously measure the temperature at the inlet to the fabric filter, determine and record the average temperatures during each 1-hour test run, and determine the 3-hour block average temperature. You would be required to ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test, and you would be required to record the feeder setting for the three test runs. If the lime feed rate varies, you would be required to determine the average feed rate from the three test runs. You would be required to submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems. Additionally, if you operate a DLS/FF, you would be required to continuously measure the water injection rate, determine and record the average water injection rate values for the three test runs, and determine the 3-hour block average water injection rate. If you operate a WS, you would be required to continuously measure the scrubber pressure drop, the scrubber liquid pH, the scrubber liquid flow rate, and the chemical addition rate (if applicable). For each WS parameter, you would be required to determine and record the average values for the three test runs and the 3-hour block average value.

*G. What Are the Continuous Compliance Requirements?*

The proposed standards require that you demonstrate continuous compliance with each emission limitation that applies to you. You would be required to follow the requirements in your OM&M plan and document conformance with your OM&M plan. You would be required to operate a CMS to monitor the operating parameters established during your initial performance test as described in the following paragraphs. The CMS would have to collect data at least every 15 minutes, and you would need to have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) per hour (not including startup, shutdown, malfunction, or out-of-control periods) to have a valid hour of data. You would have to operate the CMS at all times when the process is operating. You would also have to conduct proper maintenance of the CMS, including inspections, calibrations, and validation checks, and maintain an inventory of necessary parts for routine repairs of the CMS. Using the recorded readings, you would calculate and record the 3-hour block average values of each operating parameter. To calculate the average for each 3-hour averaging period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, or out-of-control periods).

For DIFF and DLS/FF systems, you would have to continuously maintain the 3-hour block average temperature at the fabric filter inlet at or below the average temperature, plus 14°C (25°F), established during your performance test. You would have to maintain free-flowing lime in the feed hopper or silo and to the APCD at all times. If lime is found not to be free flowing via the output of a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system, you would have to promptly initiate and complete corrective actions according to your OM&M plan. You would also have to maintain the feeder setting at or above the level established during your performance test and record the feeder setting once each shift. You would have to initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions according to your OM&M plan. You would also have to operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time would be counted. If corrective action is required, each alarm would be counted as a minimum of 1 hour, and if you take longer than 1 hour to initiate corrective action, the alarm time would be counted as the actual amount of time taken to initiate corrective action.

Additionally, for DLS/FF, you would have to continuously maintain the 3-hour block average water injection rate at or above the minimum value established during your performance test. For WS, you would have to continuously maintain the 3-hour block averages for scrubber pressure drop, scrubber liquid pH, scrubber liquid flow rate, and chemical addition rate (if applicable) at or above the minimum values established during your performance test.

*H. What Are the Notification, Recordkeeping, and Reporting Requirements?*

We are requiring owners and operators of all affected sources to submit initial notifications, notifications of performance tests, and notifications of compliance status by the specified dates in the proposed rule, which may vary depending on whether the affected source is new or existing. In addition to the information specified in 40 CFR 63.9(h)(2)(i), you would be required to include the following in your notification of compliance status: (1) The operating limit parameter values established for each affected source (with supporting documentation) and a description of the procedure used to establish the values, and (2) analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems.

We are requiring owners and operators of all affected sources to submit semiannual compliance reports containing statements and information concerning emission limitation deviations, out-of-control CMS, and periods of startup, shutdown, or malfunction when actions consistent with your approved startup, shutdown, and malfunction plan (SSMP) were taken. In addition, if you undertake an action that is inconsistent with your approved SSMP, then you would be required to submit a startup, shutdown, and malfunction report within 2 working days of starting such action and within 7 working days of ending such action.

We are requiring owners and operators of all affected sources to maintain records for at least 5 years from the date of each record. You must retain the records onsite for at least the first 2 years but may retain the records offsite for the remaining 3 years. You would be required to keep a copy of each notification and report, along with supporting documentation. You would be required to keep records related to the following: (1) Records of startup, shutdown, or malfunction; (2) records of performance tests; (3) records to show continuous compliance with each emission limitation; (4) records of each bag leak detection system alarm, including the time of the alarm, the time corrective action was initiated and completed, and a description of the cause of the alarm and the corrective action taken; (5) records of each

operating limit parameter value deviation, including the date, time, and duration of the deviation, a description of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction; (6) records of production rate; (7) records for any approved alternative monitoring or test procedures; and (8) current copies of your SSMP and OM&M plan, including any revisions, with records documenting conformance.

## III. Summary of Environmental, Energy, and Economic Impacts for the Proposed Brick and Structural Clay Products Manufacturing NESHAP

### *A. What Are the Air Quality Impacts?*

At the current level of control and 1996 production levels, nationwide emissions of HAP from the 169 BSCP facilities estimated to be major sources are about 5,700 Mg/yr (6,300 tpy). Under the proposed rule, it is assumed that DIFF will be installed on 81 tunnel kilns with production capacities equal to or greater than 9.07 Mg (10 tph) (that currently are not controlled with a DIFF, DLS/FF, or WS). This would result in an estimated reduction in nationwide HAP emissions of 2,500 Mg/yr (2,800 tpy). We estimated the impacts based on DIFF as the control technology because DIFF costs provided a conservative cost basis for the economic analyses. Based on available information on wet scrubbers, wet scrubbers achieve similar emissions reductions to DIFF, while compliance costs may be significantly less than those associated with DIFF, depending on the wastewater disposal options available to each facility.

Hydrogen fluoride emissions account for approximately 60 percent of the baseline HAP emissions. Hydrogen chloride emissions account for approximately 40 percent, with HAP metals comprising less than 1 percent of the baseline HAP emissions. Estimated nationwide emissions of HF, HCl, and HAP metals from existing major source BSCP facilities at the current level of control are 3,400 Mg/yr (3,700 tpy), 2,300 Mg/yr (2,500 tpy), and 62 Mg/yr (68 tpy), respectively. Implementing the rule as proposed would reduce nationwide HF emissions from existing tunnel kilns by about 1,500 Mg/yr (1,700 tpy), and HCl would be reduced by 1,000 Mg/yr (1,100 tpy). Emissions of HAP metals would be reduced by 24 Mg/yr (27 tpy). Implementing the rule as proposed also would reduce PM and $SO_2$ emissions by 1,300 Mg/yr (1,400 tpy) and 3,400 Mg/yr (3,800 tpy), respectively.

To project air quality impacts for new sources, we assumed that three large model tunnel kilns (each with a 15 tph capacity), equipped with DIFF, would begin operation at the beginning of the first year following promulgation of the rule as proposed. We estimate that by implementing the rule as proposed, HF emissions from new sources would be reduced by 96 Mg/yr (106 tpy), HCl emissions would be reduced by 65 Mg/yr (72 tpy), and HAP metals emissions would be reduced by 1.6 Mg/yr (1.8 tpy). We also estimate that PM and $SO_2$ emissions from the new kilns would be reduced by 88 Mg/yr (97 tpy) and 230 Mg/yr (250 tpy), respectively.

Secondary air impacts associated with the proposed BSCP rule are direct impacts that result from the operation of any new or additional APCD. The generation of electricity required to operate the APCD on new and existing kilns will result in 32 tpy of nitrogen oxides ($NO_X$) emissions in the first year following promulgation of the rule as proposed. The electricity was assumed to be generated by natural gas-fired turbines.

### *B. What Are the Water and Solid Waste Impacts?*

Because compliance with the proposed rule is based on the use of DIFF, no water pollution impacts are estimated. However, facilities will have the option of using wet scrubbers. Facilities that use wet scrubbers would have several options for disposing of wastewater, including: (1) Using an evaporator and disposing of solid waste, (2) using scrubber blowdown water as process water (this option is currently being studied within the industry and may or may not be possible at all brick plants), and (3) disposing of scrubber blowdown directly to a sewer system (this option is available to some facilities). Because of the various scenarios and considerable uncertainty, we did not attempt to estimate overall wastewater impacts. Based on available information, each scrubber-controlled kiln could generate as little as zero or as much as about 5 million gallons per year of waste water (based on a 10 gallon per minute scrubber blowdown, which is the maximum permitted amount in the industry). The solid waste impacts discussed below may be overstated since it is likely that some facilities will use wet scrubbers. However, wet scrubbers may be equipped with spray dryers to eliminate wastewater (and create solid waste).

The solid waste disposal impacts that result from the use of DIFF include the disposal of the spent lime (or other sorbent) that is injected into the kiln exhaust stream and subsequently captured by a fabric filter. We calculated the solid waste by taking the difference between the amount of lime injected into the system and the amount of reacted lime, and adding the amount of reaction products. Stoichiometric ratios of 1.0 to 2.0 have been reported for the DIFF and DLS/FF in use in the brick manufacturing industry. The average stoichiometric ratio of 1.35 was used in this analysis. Implementing the rule as proposed would result in an increase in solid waste by 28,600 Mg/yr (31,500 tpy).

To project solid waste impacts for new sources, we assumed that three large model tunnel kilns, equipped with DIFF, would begin operation at the beginning of the first year following promulgation of the rule as proposed. We estimate that implementing the rule as proposed would result in the generation of 1,230 Mg/yr (1,360 tpy) of solid waste from new sources.

### *C. What Are the Energy Impacts?*

Energy impacts consist of the electricity needed to operate the DIFF. Electricity requirements are driven primarily by the size of the fan needed in the APCD. We estimated the increase in electricity consumption that would result from implementation of the rule as proposed to be 254 terajoules per year (242 billion British thermal units (Btu) per year).

To project energy impacts for new sources, we assumed that three large model tunnel kilns, equipped with DIFF, would begin operation at the beginning of the first year following promulgation of the rule as proposed. We estimate the increase in energy consumption that would result from implementation of the rule as proposed to be 10.2 terajoules per year (9.7 billion Btu per year) for new sources.

### *D. Are There Any Additional Environmental and Health Impacts?*

Reducing HAP emissions under the proposed rule would lower occupational HAP exposure levels. The operation of APCD may increase occupational noise levels in the facilities that do not control HAP emissions.

The HAP controls that are likely to be installed under the proposed rule would provide control of $SO_2$ and PM emissions from BSCP kilns. We estimate that $SO_2$ emissions from existing kilns would be reduced by 3,400 Mg/yr (3,800 tpy) and PM emissions from existing kilns would be reduced by 1,300 Mg/yr (1,400 tpy). We also estimate that $SO_2$ and PM emissions from projected new kilns would be reduced by 230 Mg/yr

(250 tpy) and 88 Mg/yr (97 tpy), respectively.

*E. What Are the Cost Impacts?*

For existing sources, nationwide total capital costs to implement the rule as proposed are estimated at $85 million, with total annualized costs of $36 million. The capital costs include the purchase and installation of DIFF and monitoring equipment on 81 existing tunnel kilns with design capacities equal to or greater than 9.07 Mg/hr (10 tph). The annualized costs include annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, emission testing costs, and recordkeeping and reporting costs associated with installing and operating these 81 DIFF.

To project costs for new sources, we assumed that three large model tunnel kilns, equipped with DIFF, would begin operation at the beginning of the first year following promulgation of the rule as proposed. We estimate the capital costs associated with implementation of the rule as proposed to be $3.4 million for these three new sources. The capital cost of a DIFF corresponds to about 6 percent of the cost of a typical new plant, including a new mill room and kiln (a typical plant expansion would likely include a new mill room and kiln, but may not include other equipment such as raw material processing equipment). We estimate the annualized costs associated with implementation of the rule as proposed to be $1.41 million per year for new sources in the first year following promulgation of the rule as proposed.

We calculated the cost estimates using cost algorithms that are based on procedures from EPA's OAQPS Control Cost Manual (EPA 450/3–90–006, January 1990) and cost information provided by the BSCP industry. We estimated costs by developing model process units that correspond to the various sizes of kilns found at BSCP manufacturing facilities and assigning the model process units to each facility based on the kiln sizes at each facility. The facility costs were summed to determine total industry costs. Additional information on the model process units and cost estimates is included in docket A–99–30.

*F. How Can We Reduce the Cost of the Proposed Rule?*

As described elsewhere in this preamble, we have made every effort in developing the proposal to minimize the cost to the regulated community and allow maximum flexibility in compliance options consistent with our statutory obligations. However, we recognize that the proposal may still require some facilities to take costly steps to further control emissions even though their emissions may not result in exposures which could pose an excess individual lifetime cancer risk greater than one in one million or which exceed thresholds determined to provide an ample margin of safety for protecting public health and the environment from the effects of hazardous air pollutants. We are, therefore, specifically soliciting comment on whether there are further ways to structure the proposed rule to focus on the facilities which pose significant risks and avoid the imposition of high costs on facilities that pose little risk to public health and the environment.

In connection with another rulemaking, representatives of the plywood and composite wood products industry provided EPA with descriptions of three mechanisms that they believed could be used to implement more cost-effective reductions in risk. The docket for the plywood and composite wood products rule contains ''white papers'' prepared by that industry that outline their proposed approaches (See Docket Number A–98–44.) We welcome public comment on these approaches. We believe that two of the three suggested approaches warrant further consideration. We believe they could be used to focus regulatory controls on facilities with significant risks and avoid the imposition of high costs on facilities that pose little risk to public health or the environment. One of the approaches, an applicability cutoff for threshold pollutants, would be implemented under the authority of CAA section 112(d)(4); the other approach, subcategorization and delisting, would be implemented under the authority of CAA sections 112(c)(1) and 112(c)(9). The EPA requests comment on the technical and legal viability of these approaches, as well as any modifications to these approaches that commenters may wish to suggest. The maximum achievable control technology, or MACT, program outlined in CAA section 112(d) is intended to reduce emissions of HAP through the application of MACT to major sources of toxic air pollutants. Section 112(c)(9) is intended to allow EPA to avoid setting MACT standards for categories or subcategories of sources that pose little risk to public health and the environment. The EPA requests comment on whether the proposals described here appropriately rely on these provisions of CAA section 112. While both approaches focus on assessing the inhalation exposures of HAP emitted by a source, EPA specifically requests comment on the appropriateness and necessity of extending these approaches to account for non-inhalation exposures of certain HAP which may deposit from the atmosphere after being emitted into the air or to account for adverse environmental impacts. In addition to the specific requests for comment noted in this section, we are also interested in any information or comment concerning technical limitations, environmental and cost impacts, compliance assurance, legal authority, and implementation relevant to the approaches. We also request comment on appropriate practicable and verifiable methods to ensure that sources' emissions remain below levels that protect public health and the environment. We will evaluate all comments before determining whether either of the two approaches will be included in the final rule.

Applicability Cutoffs for Threshold Pollutants Under Section 112(d)(4) of the CAA

The first approach is an ''applicability cutoff'' for threshold pollutants that is based on EPA's authority under CAA section 112(d)(4). A ''threshold pollutant'' is one for which there is a concentration or dose below which adverse effects are not expected to occur over a lifetime of exposure. For such pollutants, section 112(d)(4) allows EPA to consider the threshold level, with an ample margin of safety, when establishing emissions standards. Specifically, section 112(d)(4) allows EPA to establish emission standards that are not based upon the maximum achievable control technology (MACT) specified under section 112(d)(2) for pollutants for which a health threshold has been established. Such standards may be less stringent than MACT. Furthermore, EPA has interpreted 112(d)(4) to allow us to avoid further regulation of categories of sources that emit only threshold pollutants, if those emissions result in ambient levels that do not exceed the threshold, with an ample margin of safety.[1] Industry's suggested approach interprets this provision to allow us to exempt individual facilities that can demonstrate that their emissions will not result in air concentrations above the threshold levels, with an ample margin of safety, even if the category is otherwise subject to MACT.

[1] See 63 FR 18754, 18765–66 (April 15, 1998) (Pulp and Paper Combustion Sources Proposed NESHAP).

For facilities to avoid being subject to the MACT standard, EPA would have to determine that a health effects threshold exists for each pollutant emitted by the brick and structural clay products sources at the facility and that the ambient impacts of those emissions do not exceed the threshold levels, with an ample margin of safety. The common approach for evaluating the potential hazard of a threshold air pollutant is to calculate a ''hazard quotient'' by dividing the pollutant's inhalation exposure concentration (often assumed to be equivalent to its estimated concentration in air at a location where people could be exposed) by the pollutant's inhalation Reference Concentration (RfC). An RfC is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure that, over a lifetime, likely would not result in the occurrence of adverse health effects in humans, including sensitive individuals. The EPA typically establishes an RfC by applying uncertainty factors to the critical toxic effect derived from the lowest- or no-observed-adverse-effect level of a pollutant.[2] A hazard quotient less than one means that the exposure concentration of the pollutant is less than the RfC. A hazard quotient greater than one means the exposure concentration of the pollutant is greater than the RfC. For the determinations discussed herein, EPA would generally plan to use RfC values contained in EPA's toxicology database, the Integrated Risk Information System (IRIS). When a pollutant does not have an approved RfC in IRIS, or when a pollutant is a carcinogen, EPA would have to determine whether a threshold exists based upon the availability of specific data on the pollutant's mode or mechanism of action, potentially using a health threshold value from an alternative source such as the Agency for Toxic Substances and Disease Registry (ATSDR) or the California Environmental Protection Agency (CalEPA).

In the past, EPA routinely treated carcinogens as non-threshold pollutants. The EPA recognizes that advances in risk assessment science and policy may affect the way EPA differentiates between threshold and non-threshold HAP. The EPA's draft Guidelines for Carcinogen Risk Assessment[3] suggest that carcinogens be assigned non-linear dose-response relationships where data warrant. Moreover, it is possible that dose-response curves for some pollutants may reach zero risk at a dose greater than zero, creating a threshold for carcinogenic effects. It is possible that future evaluations of the carcinogens emitted by this source category would determine that one or more of the carcinogens in the category is a threshold carcinogen or is a carcinogen that exhibits a non-linear dose-response relationship but does not have a threshold. The EPA requests comment on how we should consider the state of the science as it relates to legislative intent when making determinations under section 112(d)(4). In addition, EPA requests comment on whether there is a level of emissions of a carcinogenic HAP that could be considered insignificant enough to allow a facility to use the approaches discussed in this section.

As suggested above, in order for EPA to establish an applicability cutoff under section 112(d)(4), EPA would need to define ambient air exposure concentration limits for the threshold pollutants involved. There are several factors to consider when establishing such concentrations. First, we would need to ensure that the concentrations that would be established would protect public health with an ample margin of safety. As discussed above, the approach EPA commonly uses when evaluating the potential hazard of a threshold air pollutant is to calculate the pollutant's hazard quotient. Further, current EPA guidance suggests that when exposures to mixtures of pollutants are being evaluated, the risk assessor should calculate a hazard index by summing the individual hazard quotients for those pollutants in the mixture that affect the same target organ or system by the same mechanism[4].

As suggested by CAA legislative history, we would need to ensure that the analysis considers the total ambient air concentrations of all the emitted HAP to which the public is exposed[5]. Our goal would thus be to establish a hazard index limit for the mixture of pollutants from a source which would recognize the potential for other sources to contribute to exposure. Consistent with this goal, there are at least several options for establishing a hazard index limit for the section 112(d)(4) analysis. One option is to allow the hazard index posed by all threshold HAP emitted by brick and structural clay products sources at the facility to be no greater than one. This approach assumes that no additional threshold HAP exposures would be anticipated from other sources in the vicinity or through other routes of exposure (*i.e.,* through ingestion).

A second option is to adopt an approach similar to that used by EPA's Office of Water (OW) in establishing drinking water standards. Using this approach, we would allow that up to a certain percentage of an individual's total exposure to all threshold HAP could be contributed by emissions from brick and structural clay products sources at the facility, assuming that the rest of the individual's exposure results from other sources and through other media. In the absence of adequate exposure data, the drinking water program usually assumes that drinking water can account for up to 20 percent of an individual's exposure to an individual pollutant, assuming that the remaining 80 percent of an individual's exposure comes from other sources, such as diet[6]. The adaptation of this approach for the purposes of conducting an analysis to support a section 112(d)(4) determination is to assume that an individual's exposure to the mixture of threshold HAP emitted from the brick and structural clay products sources at a facility accounts for 20 percent of an individual's total exposure to those HAP and that other sources account for the remaining 80 percent of the exposure. This means that exposures to the mixture of HAP from brick and structural clay products sources would not be allowed to exceed a hazard index limit of 0.2.

A third option is to use available data (from scientific literature or EPA studies, for example) to determine background concentrations of HAP, possibly on a national or regional basis. These data would be used to estimate the exposures to HAP from non-brick and structural clay products sources in the vicinity of an individual facility. For example, the EPA's National-scale Air Toxics Assessment (NATA)[7] and

[2] ''Methods for Derivation of Inhalation Reference Concentrations and Applications of Inhalation Dosimetry.'' EPA–600/8–90–066F, Office of Research and Development, USEPA, October 1994.

[3] ''Draft Revised Guidelines for Carcinogen Risk Assessment.'' NCEA–F–0644. USEPA, Risk Assessment Forum, July 1999. pp 3–9ff. *http://www.epa.gov/ncea/raf/pdfs/cancer_gls.pdf*

[4] ''Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. Risk Assessment Forum Technical Panel'', EPA/630/R–00/002. USEPA, August 2000. *http://www.epa.gov/nceawww1/pdfs/chem_mix/chem_mix_08_2001.pdf*

[5] Senate Debate on Conference Report (October 27, 1990), reprinted in ''A Legislative History of the Clean Air Act Amendments of 1990,'' Comm. Print S. Prt. 103–38 (1993) (''Legis. Hist.'') at 868.

[6] ''Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000)'', Technical Support Document Volume 1: Risk Assessment''. EPA–822–B–00–005. Office of Science and Technology, Office of Water, USEPA, October 2000. *http://www.epa.gov/waterscience/humanhealth/method/complete.pdf*

[7] See *http://www.epa.gov/ttn/atw/nata*

ATSDR's Toxicological Profiles [8] contain information about background concentrations of some HAP in the atmosphere and other media. The combined exposures from brick and structural clay products sources and from other sources (as determined from the literature or studies) would then not be allowed to exceed a hazard index limit of one. The EPA requests comment on the appropriateness of setting the hazard index limit at one for such an analysis.

As an alternative to the third option, a fourth option is to allow facilities to estimate or measure their own facility-specific background HAP concentrations for use in their analysis. With regard to the third and fourth options, the EPA requests comment on how these analyses could be structured. Specifically, EPA requests comment on how the analyses should take into account background exposure levels from air, water, food and soil encountered by the individuals exposed to brick and structural clay products emissions. In addition, we request comment on how such analyses should account for potential increases in exposures due to a new or increased use of a HAP, or the effect of other nearby sources that release HAP. EPA requests comment on the feasibility and scientific validity of each of these or other approaches.

Finally, EPA requests comment on how we should implement the section 112(d)(4) applicability cutoffs, including appropriate mechanisms for applying cutoffs to individual facilities. For example, would the Title V permit process provide an appropriate mechanism? Establishing that a facility meets the cutoffs established under section 112(d)(4) will necessarily involve combining estimates of pollutant emissions with air dispersion modeling to predict exposures. The EPA envisions that we would promote a tiered analytical approach for these determinations. A tiered analysis involves making successive refinements in modeling methodologies and input data to derive successively less conservative, more realistic estimates of pollutant concentrations in air and estimates of risk. As a first tier of analysis, EPA could develop a series of simple look-up tables based on the results of air dispersion modeling conducted using conservative input assumptions. By specifying a limited number of input parameters, such as stack height, distance to property line, and emission rate, a facility could use these look-up tables to determine easily whether the emissions from their sources might cause a hazard index limit to be exceeded. A facility that does not pass this initial conservative screening analysis could implement increasingly more site-specific but more resource-intensive tiers of analysis using EPA-approved modeling procedures, in an attempt to demonstrate that their facility does not exceed the hazard index limit. The EPA's guidance could provide the basis for conducting such a tiered analysis.[9] The EPA requests comment on methods for constructing and implementing a tiered analytical approach for determining applicability of the section 112(d)(4) criterion to specific brick and structural clay products sources. It is also possible that ambient monitoring data could be used to supplement or supplant the tiered modeling approach described above, although it is envisioned that the appropriate monitoring to support such a determination could be extensive. The EPA requests comment on the appropriate use of monitoring in the determinations described above.

Subcategory Delisting Under Section 112(c)(9)(B) of the CAA

EPA is authorized to establish categories and subcategories of sources, as appropriate, pursuant to CAA section 112(c)(1), in order to facilitate the development of MACT standards consistent with section 112 of the CAA. Further, section 112(c)(9)(B) allows EPA to delete a category (or subcategory) from the list of major sources for which MACT standards are to be developed when the following can be demonstrated: (1) In the case of carcinogenic pollutants, that ''no source in the category * * * emits [carcinogenic] air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source'; (2) in the case of pollutants that cause adverse noncancer health effects, that ''emissions from no source in the category or subcategory * * * exceed a level which is adequate to protect public health with an ample margin of safety''; and (3) in the case of pollutants that cause adverse environmental effects, that ''no adverse environmental effect will result from emissions from any source.''

Given these authorities and the suggestions from the white paper prepared by representatives of the plywood and composite wood products industry (*see* Docket Number A–98–44), EPA is considering whether it would be possible to establish a subcategory of facilities within the larger brick and structural clay products industry category that would meet the risk-based criteria for delisting. Since each facility in such a subcategory would be a low-risk facility (*i.e.,* if each met these criteria), the subcategory could be delisted in accordance with section 112(c)(9), thereby limiting the costs and impacts of the proposed MACT rule to only those facilities that do not qualify for subcategorization and delisting. Facilities seeking to be included in the delisted subcategory would be responsible for providing all data required to determine whether they are eligible for inclusion. Facilities that could not demonstrate that they are eligible to be included in the low-risk subcategory would be subject to MACT and possible future residual risk standards. Although EPA currently is not convinced that subcategorization based on risk is possible within the statutory constraints of the CAA, EPA solicits comment on implementing a risk-based approach for establishing subcategories of brick and structural clay products facilities.

Another approach would be to define a subcategory of facilities within the brick and structural clay products source category based upon technological differences, such as differences in production rate, emission vent flow rates, overall facility size, emissions characteristics, processes, or air pollution control device viability. The EPA requests comment on how we might establish brick and structural clay products subcategories based on these, or other, source characteristics. If it could then be determined that each source in this technologically-defined subcategory presents a low risk to the surrounding community, the subcategory could then be delisted in accordance with 112(c)(9). The EPA requests comment on the concept of identifying technologically-based subcategories that may include only low-risk facilities within the brick and structural caly products source category.

*G. What Are the Economic Impacts?*

We conducted a detailed economic impact analysis to determine the market- and industry-level impacts associated with the proposed rule. The compliance costs of today's proposed rule are expected to increase the price of brick and reduce their domestic production and consumption. We project the price of brick to increase by

[8] See *http://www.atsdr.cdc.gov/toxpro2.html*

[9] ''A Tiered Modeling Approach for Assessing the Risks due to Sources of Hazardous Air Pollutants.'' EPA–450/4–92–001. David E. Guinnup, Office of Air Quality Planning and Standards, USEPA, March 1992.

just less than 2 percent and project no change in price for structural clay products. Domestic production of brick is expected to decline by close to 2 percent. In addition, foreign brick imports are estimated to increase while exports decrease, both by just under 2 percent. Since there is no expected change in the price of structural clay products, we predict no change in domestic production or foreign imports of structural clay products.

In terms of industry impacts, the brick producers are projected to experience a decrease in operating profits of about 18 percent, which reflects the compliance costs associated with brick production and the resulting reductions in revenues due to the increase in the price of brick and the reduced quantity purchased. Through the market impacts described above, the proposed rule would create both positive and negative financial impacts on facilities within the BSCP manufacturing industry. The majority of facilities, almost 68 percent, are expected to experience profit increases with the proposed rule; however, there are some facilities projected to lose profits (about 28 percent). Furthermore, the economic impact analysis indicates that of the 189 BSCP manufacturing facilities, two brick facilities are at risk of closure because of the proposed rule, while none of the structural clay products facilities are at risk to close.

Based on the market analysis, the annual social costs of the proposed rule are projected to be $34.5 million. This differs from the annual engineering costs of the proposed rule because the social costs account for producer and consumer behavior. These social costs are distributed across the many consumers and producers of brick. Since there are no price changes occurring in the structural clay products market, the social costs of the proposed rule are confined to the brick industry. The consumers of brick are expected to incur the $18.9 million in costs associated with the proposed rule, with domestic consumers bearing $18.8 million and foreign consumers bearing $0.1 million. Brick producers, in aggregate, are expected to bear the remaining $15.6 million annually in costs. Domestic producers incur $15.65 million while foreign producers gain $0.05 million annually.

We estimate that 15 new kilns will be built during the 5 years after promulgation of the rule as proposed. The total compliance costs associated with these kilns are projected to be less than 0.5 percent of the industry's value of shipments. The economic impact analysis estimated the impact of the proposed rule on these new sources through a sensitivity analysis. According to that analysis, it is projected that anywhere from three to six of these new kilns will be delayed in coming on-line in the BSCP manufacturing industry due to the proposed rule. Additional information is included in the economic impact analysis report located in docket A–99–30.

## IV. Rationale for Selecting the Proposed Standards for Brick and Structural Clay Products Manufacturing

### *A. How Did We Select the Emission Sources and Pollutants That Will Be Regulated?*

In the BSCP manufacturing industry, the most significant sources of HAP emissions are kilns, including continuous (tunnel and roller) kilns and periodic kilns. For this reason, the proposed rule covers both existing and new kilns at major source BSCP manufacturing facilities which meet the applicability criteria. Other sources of HAP emissions at BSCP manufacturing facilities are the raw material processing and handling equipment.

At the temperatures encountered in BSCP kilns, naturally occurring fluorides and chlorides found in the raw clays and shales that are used as raw materials are released to the atmosphere as HF and HCl. We estimate that most BSCP manufacturing facilities emit more than 9.07 Mg/yr (10 tpy) of HF and, therefore, are major sources as defined by the CAA. In addition, we estimate that many facilities are also major sources of HCl emissions. In addition to HF and HCl, all of the HAP metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury (in particulate form), nickel, and selenium) listed in section 112(b) of the CAA have been detected in brick kiln exhaust. The HAP metals may emanate from trace quantities of metals found in raw materials, metallic body additives and surface coatings commonly used in the industry, or from the fuels fired in the kilns. Therefore, we propose to regulate HF, HCl, and HAP metals (using PM as a surrogate for HAP metals, including mercury in particulate form) emissions from BSCP kilns.

Particulate matter was selected as a surrogate for HAP metals that are emitted in particulate form because HAP metals are always expected to be present in PM from BSCP kilns, and the same control mechanisms that remove PM from the exhaust stream will also remove nonvolatile and semi-volatile HAP metals. Available data show that HAP metals constitute between 0.16 percent and 4.5 percent of PM emissions from BSCP kilns. The use of PM as a surrogate pollutant for HAP metals reduces the costs associated with compliance testing and monitoring because such testing and monitoring are necessary only for one PM emission limit, rather than for numerous emission limits for individual HAP metals.

### *B. How Did We Determine Subcategories?*

Section 112(d)(1) of the CAA allows EPA to promulgate emission standards for either categories or subcategories of sources. Through subcategorization, we are able to define subsets of similar emission sources within a source category if differences in emissions characteristics, processes, APCD viability, or opportunities for pollution prevention exist within the source category. Upon initial consideration of the available information on the BSCP manufacturing industry, we determined that separate subcategories for periodic kilns and tunnel kilns were warranted for several reasons. First, periodic kilns are smaller than tunnel kilns (with lower production on an hourly basis, as well as accounting for only about 4 percent of total BSCP industry production). Second, periodic kilns are operated in batch cycles, whereas tunnel kilns operate continuously. Finally, to our knowledge, periodic kilns have not successfully been controlled using any of the currently available APCD, as have tunnel kilns, or through the use of low-HAP fuels or changes in raw materials or processes.

Following this initial subcategorization, we examined the potential for additional subcategories for tunnel kilns, including subcategorization based on kiln fuel and kiln size. We determined that because the HAP emissions from tunnel kilns primarily result from the raw materials rather than the kiln fuel, subcategorization by kiln fuel is not appropriate for BSCP tunnel kilns. We then considered subcategorization of tunnel kilns based on kiln size and, for the reasons discussed below, decided to propose two subcategories based on size.

A review of the available information regarding tunnel kilns showed that DIFF, DLS/FF, and WS, which we believe represent the best controls, generally are installed on kilns with design capacities greater than approximately 10 tph of fired product. However, in the absence of subcategorization of tunnel kilns based on size, the MACT floor for all existing tunnel kilns would be the level of control provided by DLA for all

pollutants. Specifically, the tunnel kiln subcategory (all tunnel kilns) includes 296 tunnel kilns that are located at major sources of HAP. The best-controlled 12 percent of these sources include 4 DIFF-controlled, 4 DLS/FF-controlled, 2 WS-controlled, 11 DLA-controlled and 15 uncontrolled kilns. The level of control that corresponds to the mean of the best-controlled 12 percent of these kilns is the 94th percentile level of control, which corresponds to the level of control provided by a DLA. As previously mentioned, we have several concerns about the long-term effectiveness of the DLA control technology and the degree to which we can assure continuous compliance for DLA-controlled kilns. First, long-term test data that demonstrate performance over the life of the sorbent are not available. This is important for these systems because the sorbent (limestone) is not continuously replaced with new sorbent, and we expect the performance of the systems to decrease as the sorbent is re-used and the ability of the sorbent to adsorb HF and HCl decreases. Second, representatives of DLA manufacturers and facilities that operate DLA have stated that not all limestone can effectively be used as a sorbent in a DLA. Because of these two issues, we have been unable to identify any type of parameter monitoring that could be used to assure continuous compliance. If parameter monitoring cannot be used, some type of CEMS would be required to assure continuous compliance with HF and HCl emission limits if DLA were considered as MACT control. The only potential option that we have identified for assuring continuous compliance is the installation and continuous operation of Fourier transform infrared spectroscopy (FTIR) monitoring systems. The costs associated with FTIR systems are considerable. Finally, DLA do not provide a mechanism for PM (and, therefore, metal HAP) removal and may actually create PM in some instances. For all of these reasons, we believe that DLA or equivalent controls would not represent an appropriate level of MACT control for BSCP kilns.

We also note that a rule that did not subcategorize tunnel kilns based on size would have considerable impacts on small businesses. In the absence of size-based subcategories, every existing tunnel kiln that is located at a major source of HAP would be required to install a DLA or equivalent control. We estimate that 151 of the 189 BSCP facilities, including 70 of 93 small business-owned facilities, would have to install at least one DLA or other equivalent APCD. In addition, two small business-owned BSCP facilities are estimated to incur monitoring, testing, and recordkeeping and reporting costs only. A total of 261 tunnel kilns, including 109 small business-owned kilns, would require the addition of controls to meet the requirements of a rule based on this approach. The 21 tunnel kilns that are currently equipped with DIFF, DLS/FF, WS, and DLA controls are estimated to incur only monitoring, testing, and recordkeeping and reporting costs. Fourteen tunnel kilns that duct all of the kiln exhaust to a sawdust dryer would not require controls. We estimate the total annualized cost to industry, under a regulatory approach that did not include size-based subcategories, to be $74 million, and the annualized cost to small business-owned facilities to be about $29 million.

We, therefore, concluded that subcategorizing tunnel kilns based on size would enable us to ease the burden on small businesses while fulfilling our obligations under the CAA and achieving substantial emissions reductions. Our analysis focused on subcategorization scenarios under which the MACT floor (for all pollutants) would be control with a DIFF, DLS/FF, WS, or equivalent control for a subset of tunnel kilns with design capacities equal to or greater than a specific size. The MACT floor for all pollutants for the remaining subset of kilns (those with capacities less than the specific size) would be ''no emissions reductions.'' To help select a design capacity upon which to base the subcategories, we examined the design capacities of the kilns controlled with a DIFF, DLS/FF, or WS. Our initial review of the available information showed that the smallest kiln controlled with a DIFF, DLS/FF, or WS had a design capacity of about 11 tph of fired product. We then examined the capacities of kilns owned by small and large businesses, which revealed a general trend of small businesses operating smaller kilns than large businesses. This trend was most pronounced at and below a capacity of about 10 tph. Using this information, we selected a design capacity of 10 tph as the basis for subcategorization. Under this scenario, 66 of the 77 small businesses (82 of 93 small business-owned facilities) would incur no costs for existing operations, and the total estimated cost to small businesses would be $7.2 million, compared to $29 million under the scenario that does not include size-based subcategories. Since the initial review, we have identified a new DIFF-controlled kiln with a design capacity just under 10 tph. Although this new controlled kiln is not included in the MACT floor calculations for existing sources (under lowest achievable emission rate (LAER) provisions in the CAA), the fact that it is controlled with a DIFF shows that control with a DIFF is feasible for similar-size kilns.

During the development of the proposed rule, representatives of the brick industry pointed out that impacts on small businesses (and the industry as a whole) could be further reduced by increasing the kiln design capacity upon which subcategories would be based to 13.3 tph. Upon examination of this suggestion, we determined that 13.3 tph is the highest capacity that would maintain DIFF, DLS/FF, WS, or equivalent control as the MACT floor. Subcategories based on a capacity of 13.3 tph minimize economic impacts on small and large businesses, but also minimize the HAP emissions reductions that would be achieved because the MACT controls would apply to fewer sources than a lower size cutoff. This suggestion from the brick industry representatives prompted us to examine the situation from the opposite perspective. Specifically, we determined a kiln design capacity that would maximize HAP emissions reductions by maximizing the number of sources that would be subject to the MACT controls. Based on the available information, the capacity that maximizes HAP emissions reductions is 7 tph. However, the small business impacts of subcategorization based on a 7 tph design capacity would be considerable. Table 2 of this preamble shows a summary of the estimated HAP emissions reductions and cost impacts for the various size-based subcategories that we examined.

TABLE 2.—IMPACTS OF POTENTIAL TUNNEL KILN SUBCATEGORIES

| Design capacity [a] | Number of impacted facil. | Number of impacted small business facil. | Total annual cost, $\$ \times 10^6$ | Total annual small business cost $\$ \times 10^6$ | HAP reduction (tpy) |
|---|---|---|---|---|---|
| None [b] | 160 | 72 | 74.1 | 29.4 | 4,200 |
| 7 tph | 97 | 27 | 59.4 | 15.7 | 4,358 |
| 10 tph | 59 | 11 | 35.7 | 7.17 | 2,827 |
| 13.3 tph | 29 | 3 | 16.0 | 1.42 | 1,378 |

[a] Design capacity at or above which existing tunnel kilns would be subject to the requirements of the proposed rule.
[b] With no design capacity-based subcategories, the MACT floor would be a DLA, which is a less effective HAP control device. All existing tunnel kilns would be required to install DLA or equivalent controls under this scenario.

As shown in Table 2 of this preamble, while subcategorization based on a 7 tph design capacity provides the highest level of emissions reductions and subcategorization based on a 13.3 tph design capacity results in the lowest cost impacts, subcategorization based on a 10 tph design capacity provides significant environmental benefits while reducing the cost impacts on small businesses.

As a result of the analysis of possible subcategorization levels presented above, we are proposing subcategorization of existing tunnel kilns based on a 10 tph design capacity, which we believe is reasonable. We remain interested in information that will further inform our analysis and solicit comment on the appropriate design capacity-based subcategorization level. We are specifically interested in the following:

(1) Information regarding the applicability of DIFF, DLS/FF, WS, or equivalent control to kilns below 13 tph design capacity;

(2) Information about the health risks posed by emissions from kilns below 13 tph design capacity; and

(3) Any other information regarding the feasibility, costs, and benefits of implementing a particular subcategorization level.

*C. How Did We Determine the MACT Floors for Existing Sources?*

The CAA specifies that MACT standards be at least as stringent as the floor for the sources in the relevant source category or subcategory. It further specifies that we set standards for existing sources that are no less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources (for which the Administrator has emissions information) where there are 30 or more sources in the category or subcategory. Our interpretation of the ''average emission limitation'' is that it is a measure of central tendency, such as the arithmetic average or the mean. If the mean is used when there are at least 30 sources, then the emission level achievable by the source and its APCD that is at the bottom of the top 6 percent of the best-performing sources (i.e., the 94th percentile) represents the MACT floor control level. The MACT floors for each subcategory are based on this interpretation.

After identifying the MACT floors for existing sources, we also consider control options more stringent than the MACT floor levels. The selected option may be more stringent than the MACT floor, but the control level must be achievable and reasonable in the Administrator's judgement considering cost, non-air quality health and environmental impacts, and energy requirements. The objective is to achieve the maximum degree of emissions reductions without imposing unreasonable impacts (*see* section 112(d)(2) of the CAA).

1. Existing Periodic Kilns

No existing periodic kiln is equipped with an APCD that has been demonstrated to control HAP emissions. In addition to APCD, we considered other possible MACT floors such as the use of low-HAP fuels or raw materials. However, because available data do not show increased HAP emissions based on fuel use, a MACT floor based on fuel type is not appropriate for these sources. In addition, low-HAP raw material use is not a viable MACT option because all facilities use local clays and shales to produce BSCP, and particular clays and shales are integral to those products. Changes in raw materials could change the end products. The procurement of low-HAP raw materials as a control measure is not done in the BSCP industry. After considering all of the MACT options, we determined that the MACT floor for existing periodic kilns is ''no emissions reductions,'' because we did not identify any means by which existing periodic kilns are currently reducing emissions. Because no APCD have been demonstrated to control HAP emissions, and we believe that low-HAP fuels or raw materials are not viable options, we found no beyond-the-floor options for existing periodic kilns. Therefore, we have determined that the control level for existing periodic kilns should be ''no emissions reductions.''

2. Existing Tunnel Kilns With Design Capacities Less Than 10 TPH

As discussed earlier, tunnel kilns may have more than one process stream, including the kiln exhaust process stream and the kiln/sawdust dryer exhaust process stream.

a. *Kiln Exhaust Process Stream.* For tunnel kilns with design capacities less than 10 tph of fired product, the available data show that three of the 199 kilns (1.5 percent) that are included in this subcategory are equipped with DLA. The best-controlled 12 percent of these kilns includes the three DLA-controlled kilns and 21 uncontrolled kilns. The 94th percentile level of control, or the mean of the best-controlled 12 percent, is ''no emissions reductions.'' In addition to APCD, we considered other possible MACT floors such as the use of low-HAP fuels or raw materials. However, because available data do not show increased HAP emissions based on fuel use, a MACT floor based on fuel type is not appropriate for these sources. In addition, low-HAP raw material use is not a viable MACT option because all facilities use local clays and shales to produce BSCP, and such local materials are integral to the end products that are manufactured. The procurement of low-HAP raw materials as a control measure is not done in the BSCP industry. Therefore, the MACT floor levels of HF, HCl, and PM control are ''no emissions reductions,'' because we did not identify any means by which tunnel kilns with design capacities less than 10 tph are currently reducing emissions from their kiln exhaust process streams that is sufficient to constitute a MACT floor.

We considered beyond-the-floor controls for kiln exhaust process streams from existing tunnel kilns with design capacities less than 10 tph. For these analyses, the costs of installing and operating DIFF on existing tunnel kilns with design capacities less than 10 tph, along with the associated emissions reductions and other impacts, were assessed. After analyzing all of the impacts of retrofitting the kiln exhaust process stream from each of 189 existing BSCP tunnel kilns (10 of the 199 kilns in the subcategory duct all kiln exhaust to a sawdust dryer and do not include a kiln exhaust process stream) with a design capacity less than 10 tph with a DIFF to control HAP emissions, we concluded that setting a standard reflecting this beyond-the-floor approach would be unreasonable at this time. Our analysis included an estimate of emissions reductions that would be achieved by this approach, secondary air impacts, non-air quality impacts, and cost impacts on the entire BSCP industry and on small businesses. Primary HAP air pollution impacts of the beyond-the-floor approach consist of the reduction of HF, HCl, and HAP metals emissions, which would be substantial. Specifically, the beyond-the-floor approach would reduce total HAP emissions from existing BSCP tunnel kilns with capacities less than 10 tph by 2,949 tpy, or 98.0 percent, from a baseline HAP emission level of 3,011 tpy. Particulate matter emissions reductions (PM is used as a surrogate for HAP metals), and co-control of $SO_2$ emissions (from the baseline level) also would result from the beyond-the-floor approach. The estimated baseline emissions and emissions reductions for the beyond-the-floor approach for tunnel kilns with capacities less than 10 tph are summarized in Table 3 of this preamble. Table 4 of this preamble shows a summary of the results of our evaluations of secondary air, solid waste, energy, and cost impacts for this approach. Using the emissions reductions estimates shown in Table 3 of this preamble and the beyond-the-floor cost presented in Table 4 of this preamble, the nationwide cost effectiveness of requiring tunnel kilns with capacities less than 10 tph to install DIFF controls is about $22,000 per ton of HAP removed. In addition, the costs of the beyond-the-floor approach are significantly higher than those of the floor level of control. Specifically, the cost of the beyond-the-floor approach is estimated to be $101 million for the BSCP industry, compared to $36 million under the floor approach. The cost of the beyond-the-floor approach for small businesses is estimated to be $39 million, compared to an estimated $7 million under the floor approach.

TABLE 3.—BASELINE EMISSIONS AND EMISSIONS REDUCTIONS FOR BEYOND-THE-FLOOR CONTROL OF BSCP TUNNEL KILNS WITH DESIGN CAPABILITIES LESS THAN 10 TPH

| Pollutant | Baseline emissions, tpy | Emissions reductions, tpy | Percent reduction |
|---|---|---|---|
| HF | 1,787 | 1,766 | 99 |
| HCl | 1,192 | 1,152 | 97 |
| HAP metals | 32 | 31.4 | 98 |
| Total HAP | 3,011 | 2,949 | 98 |
| PM | 1,688 | 1,651 | 98 |
| $SO_2$ | 8,277 | 4,080 | 49 |

TABLE 4.—SUMMARY OF SECONDARY AIR, SOLID WASTE, ENERGY, AND COST IMPACTS FOR BEYOND-THE-FLOOR CONTROL OF BSCP TUNNEL KILNS WITH DESIGN CAPABILITIES LESS THAN 10 TPH

| Type of impact | Beyond-the-floor impact | Comments |
|---|---|---|
| Secondary air: $NO_X$ | 55 tpy $NO_X$ increase | Based on electricity provided by gas turbines. |
| Solid waste | 34,900 tpy | Assumes facilities must dispose of all waste lime as solid waste. |
| Energy | 423,000 MMBtu/yr | |
| Cost | $65 million | Total cost of the proposed rule would be $101 million. |
| Small business cost | $33 million (95 kilns at 62 plants) | Total cost to small businesses would be $39 million. |

Based on the aforementioned analyses, we determined that the benefits of requiring controls for the kiln exhaust process streams from existing tunnel kilns with design capacities less than 10 tph do not justify the cost at this time. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time. Based on these considerations, we have decided that the control level for the kiln exhaust process stream from existing tunnel kilns with design capacities less than 10 tph should be ''no emissions reductions.''

b. *Kiln/Sawdust Dryer Exhaust Process Stream.* None of the kiln/sawdust dryer exhaust process streams from existing tunnel kilns with design capacities less than 10 tph are equipped with APCD. Nor are such kilns reducing emissions from their kiln/sawdust dryer exhaust process streams through the use of low-HAP fuels or raw materials. For the same reasons outlined in the floor discussion for the kiln exhaust process streams, we believe that the use of low-HAP fuels or raw materials is not a viable option. Therefore, because we did not identify any means by which existing tunnel kilns with design capacities less than 10 tph are currently reducing emissions from their kiln/sawdust dryer exhaust process streams, the MACT floor for all pollutants from the kiln/sawdust dryer process streams is ''no emissions reductions.''

We also considered beyond-the-floor options for the kiln/sawdust dryer exhaust process stream that is part of some sawdust-fired tunnel kilns. The options we considered were: (1) Heating the sawdust dryer exhaust above the dew points of the acid gases and then applying DIFF or DLS/FF controls to the exhaust; (2) installing a DIFF or DLS/FF prior to the sawdust dryer, and then exhausting the APCD to the sawdust dryer; and (3) requiring that facilities purchase dry sawdust or use other methods to dry the sawdust, thus eliminating the kiln/sawdust dryer process stream. Because all of these

options involve additional costs beyond the costs of the options for controlling the kiln exhaust process stream, we determined that the benefits of requiring control of the kiln/sawdust dryer process stream for existing tunnel kilns with design capacities less than 10 tph do not justify the cost at this time. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time for the kiln/sawdust dryer exhaust process stream. The control level for the kiln/sawdust dryer exhaust process stream from existing tunnel kilns with design capacities less than 10 tph is ''no emissions reductions.''

3. Existing Tunnel Kilns With Design Capacities Equal to or Greater Than 10 TPH

As discussed earlier, tunnel kilns may have more than one process stream, including the kiln exhaust process stream and the kiln/sawdust dryer exhaust process stream.

a. *Kiln Exhaust Process Stream.* The subcategory of tunnel kilns with design capacities equal to or greater than 10 tph of fired product includes 97 tunnel kilns that are located at major sources of HAP. The best-controlled 12 percent of these sources include four DIFF-controlled, four DLS/FF-controlled, two WS-controlled, and two DLA-controlled kilns. The level of control that corresponds to the mean of the best-controlled 12 percent of these kilns is the 94th percentile level of control. We consider the DIFF, DLS/FF, and WS installed on 10 of the best-controlled 12 sources to provide equivalent overall control of HAP, and each of these controls, therefore, is representative of the 94th percentile level of control. The proposed emission limits are based on the performance of all three control technologies. In addition to APCD, we considered other possible MACT floors such as the use of low-HAP fuels or raw materials. However, because available data do not show increased HAP emissions based on fuel use, a MACT floor based on fuel type is not appropriate for these sources. In addition, low-HAP raw material use is not a viable MACT option because all facilities use local clays and shales to produce BSCP, and such local materials are integral to those products. The procurement of low-HAP raw materials as a control measure is not done in the BSCP industry. Beyond-the-floor options for the kiln exhaust process stream were not evaluated because emissions reductions achieved by DIFF, DLS/FF, and WS represent the best control achieved by sources that would be subject to the proposed rule.

b. *Kiln/Sawdust Dryer Exhaust Process Stream.* None of the kiln/sawdust dryer exhaust process streams are equipped with APCD, and to our knowledge, no existing tunnel kilns with design capacities equal to or greater than 10 tph are using low-HAP fuels or raw materials to reduce HAP emissions from their kiln/sawdust dryer exhaust process streams. Therefore, the MACT floor for these kiln/sawdust dryer process streams is ''no emissions reductions.''

We considered beyond-the-floor options for the kiln/sawdust dryer exhaust process stream that is part of some sawdust-fired tunnel kilns. The options we considered were: (1) Heating the sawdust dryer exhaust above the dew points of the acid gases and then applying DIFF, DLS/FF, WS, or equivalent control to the exhaust; (2) installing a DIFF, DLS/FF, or equivalent control prior to the sawdust dryer, and then exhausting the APCD to the sawdust dryer; and (3) requiring that facilities purchase dry sawdust or use other methods to dry the sawdust, thus eliminating the kiln/sawdust dryer process stream and controlling the entire kiln exhaust process stream with a DIFF, DLS/FF, WS, or equivalent control. Because the beyond-the-floor options involve additional costs beyond the costs of the options for controlling the kiln exhaust process stream and because limited data show that sawdust dryers provide some degree (up to about 60 percent) of acid gas control, we determined that the benefits of requiring control of the kiln/sawdust dryer process stream for existing tunnel kilns with design capacities equal to or greater than 10 tph do not justify the cost at this time. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time for kiln/sawdust dryer exhaust process streams from existing tunnel kilns with a design capacity equal to or greater than 10 tph. The level of control for such process streams is ''no emissions reductions.''

By contrast, for the class of existing tunnel kilns with design capacities equal to or greater than 10 tph that first duct exhaust to sawdust dryers on or after July 22, 2002, all of the exhaust (i.e., all process streams, including the kiln/sawdust dryer exhaust process stream) is subject to the same level of control requirement as a new tunnel kiln. We believe it is important to regulate all of the exhaust from this subset of existing tunnel kilns in order to prevent existing tunnel kilns that do not duct exhaust to sawdust dryers prior to July 22, 2002 from circumventing the requirements of the proposed rule by ducting to sawdust dryers.

4. Consideration of ''Synthetic Area Sources'' in the MACT Floor Determinations for Existing Sources

In determining the MACT floors as discussed above, we included ''synthetic area sources'' (sometimes called ''synthetic minor sources''). Synthetic area sources include those that emit fewer than 10 tons per year of any HAP or fewer than 25 tons per year of any combination of HAP because they use some emission control device (or devices) adopted under existing Federal or State regulations. In the absence of such controls, these sources would be major. In this proposal, however, we are requesting comment on whether or not synthetic area sources should be included in or excluded from the MACT floor determinations for existing tunnel kilns. Industry representatives have stated that the MACT floor determination should not include these synthetic area sources. Whether or not synthetic area sources are included would affect the level of control represented by the floor determinations for existing tunnel kilns. (By contrast, the floor determination for existing periodic kilns would not be affected by the inclusion or exclusion of synthetic area sources, because the MACT floor for such kilns is ''no emissions reductions.'')

The way that including or excluding synthetic area sources would affect the floor determinations for tunnel kilns would vary depending on the design capacity-based subcategorization level. For example, for existing tunnel kilns, with no subcategories based on design capacity, the MACT floor would be a DLA if synthetic area sources are included in the floor determination; the MACT floor would be ''no emissions reductions'' if synthetic area sources are excluded from the floor determination. Thus, excluding synthetic area sources from the MACT floor determination in this example would reduce the number of impacted facilities, the total annual cost, and the HAP emissions reductions achieved at the floor level of control. Control options more stringent than the MACT floor of ''no emissions reductions'' must then be evaluated, considering the associated costs, non-air quality health and environmental impacts, and energy requirements, to arrive at the requirements of the proposed rule. Furthermore, with 10 tph design capacity-based subcategories (as proposed), the MACT floor would be a DIFF, DLS/FF or WS if synthetic area sources are included in the floor determination and the MACT floor

would be a DLA if synthetic area sources are excluded from the floor determination. Accordingly, excluding synthetic area sources from the MACT floor determination in this example would reduce both the total annual cost and the HAP emissions reductions achieved. EPA specifically solicits comment on whether or not synthetic area sources should be included in the MACT floor determinations for existing tunnel kilns.

*D. How Did We Determine the MACT Floors for New Sources?*

For new sources, the CAA requires the MACT floors to be based on the degree of emissions reductions achieved in practice by the best-controlled similar source. In some instances, the existing source MACT floor control levels may also represent the level of control appropriate for new sources. In these instances, the existing source MACT floor technology represents the greatest degree of emissions reductions that is achievable. In other instances, the MACT floor levels of control for new sources are more stringent than for existing sources.

1. New Periodic Kilns

We determined, based on design differences and the fact that periodic kilns are batch processes, that periodic kilns and tunnel kilns are not similar sources. Two major design differences between periodic and tunnel kilns are the varying temperature and flow profiles associated with periodic kilns. In a single batch cycle, periodic kiln exhaust temperatures begin at ambient temperature and minimal air flow and gradually increase to temperatures that may exceed 315°C (600°F) and flow rates in excess of 340 actual cubic meters per minute ($m^3$/min) (12,000 actual cubic feet per minute (acfm)). In contrast, tunnel kiln exhaust temperatures and flow rates remain relatively constant. In addition, periodic kilns involve a batch process whereas tunnel kilns involve a continuous process. Another difference in periodic kilns and tunnel kilns is that periodic kilns generally are used to produce specialty products such as brick shapes and structural pipe, whereas tunnel kilns typically are used to produce face brick and other standard products. Finally, APCD have not been proven on periodic kilns. Dry injection fabric filters, DLS/FF, and WS that are used to control HAP emissions from tunnel kilns have not been applied to periodic kilns, and it is not clear how these APCD would perform on periodic kilns with highly variable temperature and flow profiles. For these reasons, we do not consider periodic kilns and tunnel kilns to be similar sources. Therefore, MACT for new periodic kilns is based on the best-controlled periodic kiln. Currently, one periodic kiln is equipped with a DLA, but the DLA has not been proven effective in controlling emissions from the kiln. As previously explained, MACT options such as low-HAP fuels or raw materials are not appropriate for BSCP kilns. Therefore, the best-controlled similar source is an uncontrolled periodic kiln, and the MACT floor level of control for new periodic kilns is ''no emissions reductions.'' Because no APCD have been demonstrated to control HAP emissions, and we believe that low-HAP fuels or raw materials are not viable options, we found no beyond-the-floor options for new periodic kilns. Therefore, we have determined that the control level for new periodic kilns should be ''no emissions reductions.''

2. New Tunnel Kilns With Design Capacities Less Than 10 TPH

The new source MACT floor for tunnel kilns with design capacities less than 10 tph is based on the emission control that is achieved in practice by the best-controlled similar source. We identified a tunnel kiln with a design capacity equal to or greater than 10 tph of fired product as the best-controlled similar source. Although the MACT floor levels of control for existing tunnel kilns with design capacities less than 10 tph are ''no emissions reductions,'' we determined that the MACT control levels for new tunnel kilns with design capacities less than 10 tph are represented by DIFF-, DLS/FF-, or WS-based controls. The basis of this determination is that there are no design differences based on kiln size that would preclude the ability of a smaller (less than 10 tph capacity) kiln to be controlled with technologies that primarily have been applied to larger kilns. In fact, one new (on-line in November 2000) kiln with a capacity between 9 and 10 tph is currently controlled with a DIFF. Moreover, new sources have the ability to plan for achieving emissions reductions efficiently during the design phase that precedes their construction. Therefore, control with a DIFF, DLS/FF, WS, or equivalent control represents MACT for new tunnel kilns with design capacities less than 10 tph of fired product.

All process streams from new tunnel kilns would be subject to the emission limitations because the best-controlled sources control 100 percent of their kiln exhaust. As previously explained, options such as low-HAP fuels or raw materials are not appropriate for BSCP kilns. Beyond-the-floor options were not evaluated because emissions reductions achieved by DIFF, DLS/FF, and WS represent the best overall control of HAP.

3. New Tunnel Kilns With Design Capacities Equal to or Greater Than 10 TPH

The controls that we consider to represent the MACT floor for existing tunnel kilns with design capacities equal to or greater than 10 tph of fired product also are considered to be the best controls available for controlling HF, HCl, and PM emissions from such brick kilns. Therefore, control with a DIFF, DLS/FF, WS, or equivalent control represents the MACT floor for new tunnel kilns with design capacities equal to or greater than 10 tph.

All process streams from new tunnel kilns would be subject to the emission limitations because the best-controlled sources control 100 percent of the kiln exhaust. As previously explained, MACT options such as low-HAP fuels or raw materials are not appropriate for BSCP kilns. Beyond-the-floor options were not evaluated because emissions reductions achieved by DIFF, DLS/FF, and WS represent the best overall control of HAP.

*E. How Did We Select the Format of the Proposed Rule?*

The formats for complying with today's proposed rule include production-based emission limits and percent reduction emission limits. Affected tunnel kilns would have the option of meeting production-based or percent reduction emission limits for HF and HCl. The percent reduction emission limits alternative for HF and HCl is offered to account for the variability in the amount of these HAP in the uncontrolled kiln emissions because kilns with higher inlet HF or HCl concentrations may not be capable of meeting the production-based emission limits. Affected tunnel kilns would also have to meet a production-based emission limit for PM.

*F. How Did We Determine the Emission Limits?*

We have performance data for five of the nine DLS/FF and DIFF and one of the two WS currently operating on BSCP kilns. The evaluation of the data included analyses of APCD operating parameters to determine whether the devices were operating properly during the emission tests. The emissions data were used to develop production-based and percent removal emission limits for HF and HCl emissions from tunnel kilns. In addition, a production-based

PM emission limit for affected tunnel kilns was developed using the test data. Additional details on the test data and analyses are available in docket A–99–30.

1. Hydrogen Fluoride

The proposed HF emission limits for tunnel kilns include a production-based emission limit of 0.0135 kg/Mg (0.027 lb/ton) of fired product and a percent reduction emission limit of at least 95 percent. To develop this percent reduction emission limit, we analyzed the available HF test data from DIFF-, DLS/FF-, and WS-controlled kilns. The individual emission tests show HF or total fluoride (TF) control efficiencies ranging from 95.9 percent to 99.9 percent. The available data show that TF and HF emissions from tunnel kilns are similar, and we, therefore, consider TF control efficiencies to be good estimates of HF control efficiencies for DIFF, DLS/FF, and WS systems. For DIFF systems, one available test shows a TF control efficiency of 99.8 percent. Five HF emission tests conducted on four DLS/FF-controlled kilns show control efficiencies of 95.9 percent, 96.9 percent, 98.5 percent, 99.7 percent, and 99.9 percent. Two TF emission tests conducted on a WS-controlled kiln show control efficiencies of 98.8 percent and 99.9 percent. These data indicate that DIFF, DLS/FF, and WS, all of which are considered representative of MACT, currently operating on the best-controlled BSCP kilns are capable of achieving HF control efficiencies of 95 percent. In addition, 95 percent is the highest control level that DIFF and DLS/FF manufacturers have guaranteed for BSCP kilns. The 95 percent control efficiency was used in conjunction with the average uncontrolled HF emission factor for the BSCP industry, 0.27 kg/Mg (0.54 lb/ton), to calculate the proposed HF emission limit of 0.014 kg/Mg (0.027 lb/ton).

2. Hydrogen Chloride

The proposed HCl emission limits include a production-based emission limit of 0.019 kg/Mg (0.037 lb/ton) of fired product and a percent reduction emission limit of at least 90 percent. To develop this percent reduction emission limit, we analyzed the available HCl test data from DLS/FF-controlled kilns. Emission tests conducted on two DLS/FF-controlled kilns showed HCl control efficiencies of 98.2 percent and 99.8 percent. Because no data are available to quantify HCl control efficiencies for DIFF or WS in the BSCP industry, we examined HCl data for DIFF and WS operating in other industries. Data from DIFF that are used to control emissions from sources within the secondary aluminum industry indicate that the systems provide 90 percent control of HCl, which is the HCl emission limit in the secondary aluminum NESHAP (65 FR 15690, March 23, 2000). Measured HCl concentrations from sources within the secondary aluminum industry are within the range of concentrations measured from brick kilns. Wet scrubbers are expected to perform at least as well as DLS/FF and DIFF. Additionally, data from WS used on medical waste incinerators show HCl reductions of 99 percent, although these control efficiencies were achieved on much higher inlet HCl loadings (61 FR 31736, June 20, 1996). Because we believe that it is important to consider the variability in performance of the control technologies representative of MACT, we selected 90 percent as the percent reduction emission limit for HCl. Control device vendors have indicated that WS can meet this emission limit. This 90 percent control efficiency was used in conjunction with the average uncontrolled HCl emission factor for the BSCP industry, 0.19 kg/Mg (0.37 lb/ton), to calculate the proposed HCl emission limit of 0.019 kg/Mg (0.037 lb/ton).

3. Particulate Matter

Particulate matter was selected as a surrogate pollutant for HAP metals, including mercury in particulate form, that are emitted from BSCP kilns. The percentages of PM emissions composed of HAP metals at four facilities for which HAP metals and PM data are available are 0.16 percent, 0.99 percent, 2.8 percent, and 4.5 percent. The large degree of variability in these percentages may be a result of differences in metallic surface coatings, body additives, brick raw material composition, kiln fuel, or a combination of these factors. The available test data for DIFF-, DLS/FF-, and WS-controlled kilns indicate that production-based outlet PM emissions range from 0.0017 kg/Mg (0.0034 lb/ton) to 0.060 kg/Mg (0.12 lb/ton). We selected the high end of the range from the best-controlled kilns, 0.060 kg/Mg (0.12 lb/ton) of fired product, as the PM emission limit for tunnel kilns in order to include WS, which would be less costly for some facilities than DIFF and DLS/FF and which would more readily achieve high HF and HCl removal, as a viable control option for complying with the proposed rule.

*G. How Did We Select the Operating Limits and Monitoring Requirements?*

We selected operating limits and monitoring requirements that would ensure proper operation of APCD used to comply with the proposed rule. These operating limits and monitoring requirements would require you to monitor and maintain certain parameters within levels established during performance tests that documented compliance with the proposed emission limits. We believe that these operating limits and monitoring requirements would provide sufficient information needed to assure continuing compliance or identify operating problems at the source. At the same time, the provisions are not labor intensive, do not require expensive or complex equipment, and do not require burdensome recordkeeping. Temperature monitoring and recording equipment and lime injection rate monitoring and recording equipment are standard features on DIFF and DLS/FF. Water injection rate monitoring and recording equipment is a standard feature on DLS/FF. For WS, pressure drop monitors and liquid flow monitors often are part of standard scrubber instrumentation.

## V. Summary of the Proposed Rule for Clay Ceramics Manufacturing

*A. What Source Category Is Regulated by the Proposed Rule?*

Today's proposed rule for clay ceramics manufacturing applies to clay ceramics manufacturing facilities that are, are located at, or are part of, a major source of HAP emissions. The clay ceramics manufacturing source category includes those facilities that manufacture pressed floor tile, pressed wall tile, and other pressed tile; or sanitaryware (toilets and sinks). Clay ceramics are primarily composed of clay and shale, and may include many different additives, including silica, talc, and various high purity powders produced by chemical synthesis. Clay ceramics manufacturing generally includes raw material processing and handling and forming of the tile or sanitaryware shapes, followed by drying, glazing, and firing. Most clay ceramics are coated with a glaze prior to firing. The clay ceramics industry also includes dinnerware and pottery manufacturing, but these industry segments are not covered by the proposed rule because we determined that there are no dinnerware or pottery manufacturing facilities that are major sources of HAP.

Available information shows a total of 58 facilities that produce clay ceramics. Thirty-one of these facilities, located in 16 States, primarily produce pressed tile, while 26 of these facilities, located in 15 States, primarily produce

sanitaryware. Eight of the 58 clay ceramics manufacturing facilities are estimated to be major sources. Thirteen clay ceramics facilities are owned by small businesses, and none of the small business-owned facilities are estimated to be major sources.

All clay ceramics are fired in kilns. Firing may be performed in one or more stages. Tile can be fired in either continuous (tunnel or roller) or batch (periodic) kilns, but most facilities use either tunnel or roller kilns for tile production. Most newer tile kilns are roller kilns, which are considerably more fuel efficient than tunnel kilns. Production rates for both tunnel and roller kilns average between 2 and 3 tph. Nearly all kilns are fueled by natural gas. Periodic kilns are usually used at smaller facilities or are used primarily for second-firing a product after a glaze has been applied. Most of the periodic kiln times range from 20 to 40 hours per batch.

The sanitaryware industry uses either tunnel kilns or periodic kilns for firing. Tunnel kilns account for most sanitaryware firing; periodic kilns are used primarily for refiring rejected pieces that have been repaired and re-glazed. Some smaller facilities use periodic kilns for all firing operations. Production rates for tunnel kilns average between 2 and 3 tph. Most sanitaryware kilns are fired with natural gas. Most tunnel and periodic kilns operate with maximum temperatures in the range of 950° to 1260°C (1750° to 2300°F).

The primary HAP emission sources at clay ceramics manufacturing plants are roller, tunnel, and periodic kilns which emit HF, HCl, and HAP metals. Kilns also emit PM and $SO_2$. Currently, no APCD are used by the clay ceramics industry to control emissions from kilns. Other sources of HAP emissions at clay ceramics manufacturing plants are the raw material processing and handling equipment.

*B. What Are the Affected Sources?*

The affected sources, which are the portions of each source in the category for which we are setting emission standards, are each new or reconstructed tunnel and roller kiln. Kilns that are used exclusively for R&D and not used to manufacture products for commercial sale are not subject to the requirements of today's proposed rule. Kilns that are used exclusively for refiring or for setting glazes on previously fired products are not subject to the requirements of today's proposed rule.

A source is a new affected source if construction began after July 22, 2002. An affected source is reconstructed if the criteria defined in 40 CFR 63.2 are met.

*C. When Must I Comply With the Proposed Rule?*

New or reconstructed affected sources with an initial startup before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] must comply no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. New or reconstructed affected sources with an initial startup after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] must comply upon initial startup. Any portion of existing facilities that become new or reconstructed major sources and any new or reconstructed area sources that become major sources must be in compliance upon initial startup.

*D. What Are the Emission Limits?*

Today's proposed rule includes emission limits in the form of production-based mass emission limits and percent reduction requirements. In establishing the HAP emission limits, we selected PM as a surrogate for HAP metals, including mercury in particulate form. Today's proposed rule includes HF, HCl, and PM emission limits for new and reconstructed affected sources at clay ceramics manufacturing facilities.

If you own or operate a new or reconstructed tunnel or roller kiln, you would be required to meet an HF emission limit of 0.014 kg/Mg (0.027 lb/ton) of product or reduce uncontrolled HF emissions by at least 95 percent. You also would be required to meet an HCl emission limit of 0.019 kg/Mg (0.037 lb/ton) of product or reduce uncontrolled HCl emissions by at least 90 percent. If you own or operate a new or reconstructed tunnel or roller kiln, you also would be required to meet a PM emission limit of 0.06 kg/Mg (0.12 lb/ton).

*E. What Are the Operating Limits?*

The operating limits being proposed for new and reconstructed clay ceramics tunnel and roller kilns are the same as those that are being proposed for new and reconstructed BSCP tunnel kilns. These operating limits are presented in section II.E of this preamble. We also are soliciting comment on requiring the application of PM CEMS as a method to assure continuous compliance with the proposed PM emission limits for clay ceramics tunnel and roller kilns. Specifically, we are soliciting comment on the relation of a PM CEMS requirement to the PM emission limits that are proposed today. This includes the level and averaging time of a CEMS-based PM emission limit and the methodology for deriving the limit from the available data for clay ceramics tunnel and roller kilns.

We have continued to learn about the capabilities and performance of PM CEMS through performing and witnessing field evaluations and through discussions with our European counterparts. We believe there is sound evidence that PM CEMS should work on clay ceramics tunnel and roller kilns.

We intend to propose revisions to the performance specification for PM CEMS (PS–11, 40 CFR part 60, appendix B, and Procedure 2, 40 CFR part 60, appendix F) in the near future with subsequent promulgation.

*F. What Are the Performance Test and Initial Compliance Requirements?*

The performance test and initial compliance requirements being proposed for new and reconstructed clay ceramics tunnel and roller kilns are the same as those that are being proposed for BSCP manufacturing kilns. These requirements are presented in section II.F of this preamble.

*G. What Are the Continuous Compliance Requirements?*

The continuous compliance requirements being proposed for new and reconstructed clay ceramics tunnel and roller kilns are the same as those that are being proposed for BSCP manufacturing kilns. These requirements are presented in section II.G of this preamble.

*H. What Are the Notification, Recordkeeping, and Reporting Requirements?*

The notification, recordkeeping, and reporting requirements being proposed for new and reconstructed clay ceramics tunnel and roller kilns are the same as those that are being proposed for BSCP manufacturing kilns. These requirements are presented in section II.H of this preamble.

## VI. Summary of Environmental, Energy, and Economic Impacts for the Proposed Clay Ceramics Manufacturing NESHAP

*A. What Are the Air Quality Impacts?*

Because we are not regulating existing sources under the proposed rule, no air quality impacts are projected for existing sources. To project air quality impacts for new sources, we assumed that one tile roller kiln (3.5 tph capacity) and one sanitaryware tunnel kiln (4 tph capacity), each equipped with a DIFF, will begin operation at the beginning of the first year following promulgation of the rule as proposed. We estimate that by implementing the rule as proposed,

HF emissions from these new sources would be reduced by 8.1 Mg/yr (8.9 tpy), HCl emissions would be reduced by 4.8 Mg/yr (5.3 tpy), and HAP metals emissions would be reduced by 0.19 Mg/yr (0.21 tpy). We also estimate that PM and $SO_2$ emissions from the new kilns would be reduced by 9.0 Mg/yr (9.9 tpy) and 22 Mg/yr (24 tpy), respectively.

Secondary air impacts associated with the proposed clay ceramics rule are direct impacts that result from the operation of any new APCD. The generation of electricity required to operate the control devices on the two projected new kilns will result in 0.4 tpy of $NO_X$ emissions in the first year following promulgation of the rule as proposed. The electricity was assumed to be generated by natural gas-fired turbines.

*B. What Are the Water and Solid Waste Impacts?*

Because we are not regulating existing sources under the proposed rule, no water and solid waste impacts are projected for existing sources. Our analyses are based on the use of DIFF for controlling new kilns and, therefore, no water impacts are projected for new sources. To project solid waste impacts for new sources, we assumed that one tile roller kiln and one sanitaryware tunnel kiln, each equipped with a DIFF, will begin operation at the beginning of the first year following promulgation of the rule as proposed. The solid waste disposal impacts that result from the use of DIFF will include the disposal of the spent lime that is injected into the kiln exhaust stream and subsequently captured by a fabric filter. We calculated the solid waste by taking the difference between the amount of lime injected into the system and the amount of reacted lime and adding the amount of reaction products. Stoichiometric ratios of 1.0 to 1.5 have been reported for the DIFF in use in the brick manufacturing industry. An average stoichiometric ratio of 1.35 was used in this analysis. We estimate that implementing the rule as proposed would result in the generation of 114 Mg/yr (126 tpy) of solid waste from new sources.

*C. What Are the Energy Impacts?*

Because we are not regulating existing sources under the proposed rule, no energy impacts are projected for existing sources. To project energy impacts for new sources, we assumed that one tile roller kiln and one sanitaryware tunnel kiln, each equipped with a DIFF, will begin operation at the beginning of the first year following promulgation of the rule as proposed. Energy impacts consist of the electricity needed to operate the DIFF. Electricity requirements are driven primarily by the size of the fan needed in the control device. We estimate the increase in energy consumption that would result from implementation of the rule as proposed to be 3.2 terajoules per year (3.0 billion Btu per year).

*D. Are There Any Additional Environmental and Health Impacts?*

Because we are not regulating existing sources under the proposed rule, no additional environmental and health impacts are projected for existing sources. The HAP controls that are likely to be installed on new kilns also provide control of $SO_2$ and PM emissions. We estimate that $SO_2$ and PM emissions from the projected new kilns would be reduced by 22 Mg/yr (24 tpy) and 9.0 Mg/yr (9.9 tpy), respectively.

*E. What Are the Cost Impacts?*

Because we are not regulating existing sources under the proposed rule, no cost impacts are projected for existing sources. To project costs for new sources, we assumed that one tile roller kiln and one sanitaryware tunnel kiln, each equipped with a DIFF, will be built during the first year following promulgation of the rule as proposed. We estimate the capital costs associated with implementation of the rule as proposed to be $1.1 million for new sources. The capital costs include the purchase and installation of DIFF and monitoring equipment. We estimate the annualized costs associated with implementation of the rule as proposed to be $560,000 per year for new sources. The annualized costs include annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, emission testing costs, and recordkeeping and reporting costs associated with installing and operating the DIFF.

We calculated the cost estimates using cost algorithms that are based on procedures from EPA's OAQPS Control Cost Manual (EPA 450/3–90–006, January 1990) and cost information provided by the BSCP industry and control device vendors. We estimated costs by developing model process units that correspond to the various sizes of kilns found at clay ceramics manufacturing facilities. Additional information on the model process units and cost estimates are included in docket A–2000–48.

*F. What Are the Economic Impacts?*

The goal of the economic impact analysis is to estimate the market response of clay ceramics manufacturing producers to the proposed rule and to determine the economic effects that may result due to the proposed rule. Because the MACT floor for existing clay ceramics kilns is ''no emissions reductions,'' there are no compliance costs associated with today's proposed rule. The aggregate price of ceramic products is, therefore, expected to remain the same. Because the prices of ceramic products are not expected to change due to the proposed rule, there are no projected changes in domestic production, domestic consumption, or foreign trade. Therefore, no economic impacts on existing major sources are expected from the proposed rule.

Unlike existing sources, new sources used to produce clay ceramics will face positive compliance costs. We estimate that two new kilns will be constructed in the first 5 years after the rule is promulgated as proposed. One new 3.5 tph capacity roller kiln is projected to come on-line in the ceramic floor and wall tile industry, and one new 4 tph capacity tunnel kiln is projected for the sanitaryware industry. Industry compliance costs associated with these kilns are expected to be less than 0.1 percent of industry value of shipments for each of these industries. At the new kiln level, the share of costs to sales generated from the output produced by the ceramic floor and wall tile kiln is expected to be less than 1.5 percent. No level of cost-to-sales for sanitaryware kilns could be developed due to the diversity of product types that they produce.

## VII. Rationale for Selecting the Proposed Standards for Clay Ceramics Manufacturing

*A. How Did We Select the Emission Sources and Pollutants That Will Be Regulated?*

In the clay ceramics manufacturing industry, the most significant sources of HAP emissions are kilns, including continuous (tunnel and roller) kilns and periodic kilns. Other sources of HAP emissions at clay ceramics manufacturing facilities are the raw material processing and handling equipment. The proposed rule covers new tunnel and roller kilns at major source clay ceramics manufacturing facilities.

At the temperatures encountered in clay ceramics kilns, naturally occurring fluorides and chlorides found in raw clays and shales are released to the atmosphere as HF and HCl. We estimate that eight clay ceramics manufacturing facilities emit more than 9.07 Mg/yr (10 tpy) of HF and, therefore, are major

sources as defined by the CAA. In addition, we estimate that some of these facilities may emit more than 9.07 Mg/yr (10 tpy) of HCl. In addition to HF and HCl, it is likely that all of the HAP metals (antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury (in particulate form), nickel, and selenium) listed in section 112(b) of the CAA may be emitted from clay ceramics kilns because these pollutants have been detected in brick kiln exhaust. The HAP metals may emanate from trace quantities of metals found in raw materials, metallic body additives, glazes, and other surface coatings commonly used in the industry, or from the fuels fired in the kilns. Therefore, we propose to regulate HF, HCl, and HAP metals (using PM as a surrogate for HAP metals, including mercury in particulate form) emissions from clay ceramics kilns. Clay ceramics kilns that are used exclusively for refiring or for setting glazes on previously fired products are not expected to emit HF or HCl and, therefore, would not be subject to the proposed rule.

Particulate matter was selected as a surrogate for HAP metals that are emitted in particulate form because HAP metals are expected to be present in the clay ceramics kiln exhaust stream, and the same control mechanisms that remove PM from the exhaust stream also will remove nonvolatile and semi-volatile HAP metals. Available data from the brick industry show that HAP metals constitute between 0.16 percent and 4.5 percent of kiln PM emissions. The use of PM as a surrogate pollutant for HAP metals also reduces the costs associated with compliance testing and monitoring because such testing and monitoring is necessary only for a single PM emission limit, rather than for numerous emission limits for individual HAP metals.

*B. How Did We Determine Subcategories?*

Section 112(d)(1) of the CAA allows EPA to promulgate emission standards for either categories or subcategories of sources. Through subcategorization, we are able to define subsets of similar emission sources within a source category if differences in emissions characteristics, processes, APCD viability, or opportunities for pollution prevention exist within the source category. Upon initial consideration of the available information on the clay ceramics manufacturing industry, we determined that separate subcategories for periodic kilns and continuous (tunnel and roller) kilns were warranted because periodic kilns are smaller than tunnel and roller kilns (with lower production on an hourly basis, and accounting for only a small percentage of total clay ceramics industry production) and are operated in batch cycles, whereas tunnel and roller kilns operate continuously. We also examined subcategorization by kiln fuel, but determined that fuel-based subcategories are not appropriate for these sources because available data from similar sources in the BSCP industry do not show increased HAP emissions based on fuel use.

*C. How Did We Determine the MACT Floors for Existing Sources?*

The CAA specifies that we set standards for existing sources that are no less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources where there are 30 or more sources (for which the Administrator has emissions information) in the category or subcategory, or the best performing five sources (for which the Administrator has or could reasonably obtain emissions information) where there are fewer than 30 sources.

After identifying the MACT floors for existing sources, we also consider control options more stringent than the MACT floor levels. The selected option may be more stringent than the MACT floor, but the control level must be achievable and reasonable in the Administrator's judgement considering cost, non-air quality health and environmental impacts, and energy requirements. The objective is to achieve the maximum degree of emissions reductions without imposing unreasonable impacts (see section 112(d)(2)of the CAA).

1. Existing Periodic Kilns

No existing periodic kilns are equipped with APCD. In addition to APCD, we considered other possible MACT floors such as the use of low-HAP fuels or raw materials. However, because available data from the clay ceramics and BSCP industries do not show increased HAP emissions based on fuel use, a MACT floor based on fuel type is not appropriate for these sources. In addition, procurement of low-HAP raw materials has not been identified as a control measure that is used in the clay ceramics industry. Therefore, the MACT floor levels of HF, HCl, and PM control for existing periodic kilns are ''no emissions reductions.''

We consider clay ceramics periodic kilns to be similar sources to BSCP periodic kilns. Currently, one BSCP periodic kiln is equipped with a DLA, but the DLA has not been proven effective in controlling emissions from the kiln. We believe that requiring the use of low-HAP fuels would not be appropriate for these sources because, as noted above, available data do not show increased HAP emissions based on fuel use. We also believe that requiring procurement of low-HAP raw materials would not be appropriate because the raw materials used in clay ceramics manufacturing are integral to the end products manufactured. Because no APCD have been demonstrated to control HAP emissions from clay ceramics periodic kilns or BSCP periodic kilns, and low-HAP fuels or raw materials are not viable options, we found no beyond-the-floor options for existing periodic kilns. Therefore, we have determined that the control level for existing periodic kilns should be ''no emissions reductions.''

2. Existing Tunnel Kilns and Roller Kilns

No existing clay ceramics tunnel kilns or roller kilns are equipped with APCD. In addition to APCD, we considered other possible MACT floors such as the use of low-HAP fuels or raw materials. However, because available data from the clay ceramics and BSCP industries do not show increased HAP emissions based on fuel use, a MACT floor based on fuel type is not appropriate for these sources. In addition, procurement of low-HAP raw materials has not been identified as a control measure that is used in the clay ceramics industry. Therefore, the MACT floor levels of HF, HCl, and PM control for existing clay ceramics tunnel and roller kilns are ''no emissions reductions.''

We considered beyond-the-floor controls for existing clay ceramics tunnel and roller kilns. For these analyses, we assessed the costs, emissions reductions, and other impacts of installing and operating a DIFF, which is one APCD representative of the MACT floor for new clay ceramics tunnel and roller kilns, on each existing tunnel and roller kiln located at a major source of HAP. After analyzing all of the impacts of retrofitting each of the 14 existing tile tunnel kilns, 16 existing tile roller kilns, and 23 existing sanitaryware tunnel kilns with a DIFF to control HAP emissions, we concluded that setting standards reflecting this beyond-the-floor approach would be unreasonable at this time. Our analysis included an estimate of emissions reductions that would be achieved by this approach, secondary air impacts, non-air quality impacts, and cost impacts on the clay ceramics manufacturing industry. Primary HAP air pollution impacts from the beyond-

the-floor approach consist of the reduction of HF, HCl, and HAP metals emissions. Specifically, the beyond-the-floor approach would reduce total HAP emissions from existing clay ceramics tunnel and roller kilns by 435 tpy, or 99 percent, from a baseline HAP emission level of 441 tpy. Particulate matter emissions reductions (PM is used as a surrogate for HAP metals) and co-control of $SO_2$ emissions (from the baseline level) also would result from the beyond-the-floor approach. The estimated baseline emissions and emissions reductions for the beyond-the-floor approach for clay ceramics tunnel kilns and roller kilns are summarized in Table 5 of this preamble. Table 6 of this preamble shows a summary of the results of our evaluations of secondary air, solid waste, energy, and cost impacts for this approach. Using the emissions reductions estimates shown in Table 5 of this preamble and the beyond-the-floor cost presented in Table 6 of this preamble, the nationwide cost effectiveness of requiring clay ceramics tunnel and roller kilns to install DIFF controls is about $36,000 per ton of HAP removed. In addition, the costs of the beyond-the-floor approach are significantly higher than those of the floor level of control. Specifically, the cost of the beyond-the-floor approach is estimated to be $15.8 million for the clay ceramics manufacturing industry, compared to no cost for existing sources under the floor approach.

TABLE 5.—BASELINE EMISSIONS AND EMISSIONS REDUCTIONS FOR BEYOND-THE-FLOOR CONTROL OF CLAY CERAMICS TUNNEL KILNS AND ROLLER KILNS

| Pollutant | Baseline emissions, tpy | Emissions reductions, tpy | Percent reduction |
|---|---|---|---|
| HF | 267 | 265 | 99 |
| HCl | 167 | 164 | 98 |
| HAP metals | 5.9 | 5.9 | 99.9 |
| Total HAP | 441 | 435 | 99 |
| PM | 294 | 294 | 99.9 |
| $SO_2$ | 1,460 | 730 | 50 |

TABLE 6.—SUMMARY OF SECONDARY AIR, SOLID WASTE, ENERGY, AND COST IMPACTS FOR BEYOND-THE-FLOOR CONTROL OF CLAY CERAMICS TUNNEL KILNS AND ROLLER KILNS

| Type of impact | Beyond-the-floor impact | Comments |
|---|---|---|
| Secondary air: $NO_X$ | 12 tpy $NO_X$ increase | Based on electricity provided by gas turbines. |
| Solid waste | 3,800 tpy | Assumes facilities must dispose of all waste lime as solid waste. |
| Energy | 92,000 MMBtu/yr | |
| Cost | $15.8 million. | |

Based on the aforementioned analyses, we determined that the benefits of requiring controls for existing tunnel kilns and roller kilns do not justify the cost at this time. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time. Based on these considerations, we have decided that the control level for existing clay ceramics tunnel kilns and roller kilns should be ''no emissions reductions.''

*D. How Did We Determine the MACT Floors for New Sources?*

For new sources, the CAA requires the MACT floors to be based on the degree of emissions reductions achieved in practice by the best-controlled similar source.

1. New Periodic Kilns

Because we consider clay ceramics periodic kilns to be similar sources to BSCP periodic kilns, MACT for new clay ceramics periodic kilns is based on the best-controlled clay ceramics or BSCP periodic kiln. Currently, one BSCP periodic kiln is equipped with a DLA, but the DLA has not been proven effective in controlling emissions from the kiln. As previously explained, MACT options such as low-HAP fuels or raw materials are not appropriate for clay ceramics kilns. Therefore, the best-controlled similar source is an uncontrolled periodic kiln, and the MACT floor level of control for new clay ceramics periodic kilns is ''no emissions reductions.'' Because no APCD have been demonstrated to control HAP emissions, and we believe that low-HAP fuels or raw materials are not viable options, we found no beyond-the-floor options for new periodic kilns. Therefore, we have determined that the control level for new periodic kilns should be ''no emissions reductions.''

2. New Tunnel and Roller Kilns

For new clay ceramics tunnel and roller kilns, we identified tunnel kilns that produce BSCP as the best-controlled similar source. Although the MACT floor levels of HF, HCl, and PM control for clay ceramics kilns are ''no emissions reductions,'' we determined that MACT for new tunnel and roller kilns is represented by DIFF-, DLS/FF-, or WS-based controls. These controls are considered equivalent in overall control of HAP and are installed on the ten best performing existing BSCP tunnel kilns. The basis of this determination is that BSCP kilns and clay ceramics kilns process many of the same types of raw materials, and the types of emissions (HF, HCl, HAP metals) are the same. Therefore, control with a DIFF, DLS/FF, WS, or equivalent control represents the MACT floor level of control for new clay ceramics tunnel and roller kilns. As previously explained, MACT options such as low-HAP fuels or raw materials are not appropriate for clay ceramics kilns. Beyond-the-floor options for new tunnel and roller kilns were not evaluated because the emissions reductions achieved by DIFF, DLS/FF, and WS represent the best overall control of HAP.

*E. How Did We Select the Format of the Proposed Rule?*

The formats for complying with today's proposed rule include production-based emission limits and percent reduction emission limits. Affected tunnel and roller kilns would

have the option of meeting production-based or percent reduction emission limits for HF and HCl. The percent reduction emission limits alternative for HF and HCl is offered to account for the variability in the amount of these HAP in the uncontrolled kiln emissions, because kilns with higher inlet HF or HCl concentrations may not be capable of meeting the production-based emission limits. Affected tunnel and roller kilns also would have to meet a production-based emission limit for PM.

*F. How Did We Determine the Emission Limits?*

Because we determined clay ceramics tunnel and roller kilns to be similar sources to BSCP tunnel kilns, and we based MACT on the best-controlled BSCP tunnel kilns, the emission limits being proposed for clay ceramics manufacturing kilns are the same emission limits that are being proposed for BSCP manufacturing kilns. The rationale for the development of the emission limits for BSCP manufacturing kilns is discussed in section IV.F of this preamble.

*G. How Did We Select the Operating Limits and Monitoring Requirements?*

Because we determined clay ceramics tunnel and roller kilns to be similar sources to BSCP tunnel kilns, and we based MACT on the best-controlled BSCP tunnel kilns, the operating limits and monitoring requirements being proposed for clay ceramics manufacturing kilns are the same as those that are being proposed for BSCP manufacturing kilns. The rationale for the development of the operating limits and monitoring requirements is discussed in section IV.G of this preamble.

## VIII. Solicitation of Comments and Public Participation

We are seeking full public participation in arriving at our final decisions, and we encourage comments on all aspects of this proposal from all interested parties. Full supporting data and detailed analyses should be submitted with comments to allow us to make maximum use of the comments. Information on where and when to submit comments is listed under the **ADDRESSES** and **DATES** sections. Information on procedures for submitting proprietary information in the comments is listed under the **SUPPLEMENTARY INFORMATION** section.

## IX. Administrative Requirements

*A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to 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 obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rules are not ''significant regulatory actions'' because none of the listed criteria apply to these actions. Consequently, these actions were not submitted to OMB for review under Executive Order 12866.

*B. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns the 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 EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rules are not subject to Executive Order 13045 because they are not economically significant regulatory actions as defined by Executive Order 12866, and they are based on technology performance and not on health or safety risks.

*C. Executive Order 13132, Federalism*

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

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, the EPA must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rules 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. The proposed rules would not impose directly enforceable requirements on States, nor would they preempt them from adopting their own more stringent programs to control emissions from BSCP and clay ceramics manufacturing facilities. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rules. Although section 6 of Executive Order 13132 does not apply to the proposed rules, the EPA is providing State and local officials an opportunity to comment on the proposed rules. A summary of the concerns raised during the notice and comment process and EPA's response to those concerns will be provided in the final rulemaking action.

*D. 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 rules do not have tribal implications. They 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 are known to own or operate BSCP or clay ceramics manufacturing facilities. Thus, Executive Order 13175 does not apply to the proposed rules.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, the EPA specifically solicits additional comment on the proposed rules from tribal officials.

*E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

These rules are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not significant regulatory actions under Executive Order 12866.

*F. Unfunded Mandates Reform Act of 1995*

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

The EPA has determined that the proposed rules do 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 total annual cost for the proposed BSCP standards for any 1 year is estimated at $36 million. Because the proposed clay ceramics manufacturing standards would not regulate existing sources, the total annual cost is zero. Thus, today's proposed rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rules contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rules are not subject to the requirements of section 203 of the UMRA.

*G. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 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 government jurisdictions. The following two sections provide descriptions of the small business assessments for the two categories of sources addressed by today's proposal.

1. Brick and Structural Clay Products (BSCP) Manufacturing

For purposes of assessing the impacts of today's proposed rule on BSCP manufacturing sources that are small entities, a small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Small Business Administration size standards for BSCP manufacturing, by NAICS code, are shown in Table 7 of this preamble.

TABLE 7.—SMALL BUSINESS SIZE STANDARDS FOR BSCP MANUFACTURING

| NAICS code | Size standard, number of employees |
|---|---|
| 327121 | 500 |
| 327122 | 500 |
| 327123 | 500 |
| 327125 | 750 |
| 327993 | 750 |

In accordance with the RFA, we conducted an assessment of the proposed standards on small businesses within the BSCP manufacturing industry. Based on SBA NAICS-based size definitions and reported sales and employment data, the EPA identified 77 of the 90 companies owning BSCP manufacturing facilities as small businesses. Although small businesses represent 86 percent of the companies within the source category, they are expected to incur 20 percent of the total industry engineering compliance costs of $35.8 million. Additionally, 66 of the 77 small businesses will incur no costs. Under the proposed rule, the mean annual compliance cost for this source category, as a share of sales, for small businesses is 0.5 percent, and the median is 0.0 percent, with a range of 0.0 percent to 5.3 percent. We estimate that one small firm in this source category may experience an impact between 1 percent and 3 percent of sales, and 9 percent of small businesses (or eight firms) may experience an impact greater than 3 percent of sales.

We also conducted an economic impact analysis that accounted for firm behavior to provide an estimate of the facility and market impacts of the proposed rule. The analysis projected that of the 189 facilities in this source category, two facilities are at risk of closure. Neither of these facilities is owned by a small business. The median compliance cost is below 1 percent of sales for both small and large firms affected by the proposed rule (0.0 and 0.1 percent for small and large firms, respectively).

Fifteen new BSCP manufacturing sources are projected to be constructed during the five years after promulgation of the rule. Industry compliance costs associated with these sources are anticipated to be less than 0.5 percent of the BSCP manufacturing industry's value of shipments. According to the new source economic impact analysis, three to six of these new sources may be delayed in coming on-line due to the compliance costs they would face. We cannot determine with certainty whether these new sources will be built by large or small companies. Regardless, impacts at the company level are not expected to be significant for a substantial number of small entities.

2. Clay Ceramics Manufacturing

For purposes of assessing the impacts of today's proposed rule on clay ceramics manufacturing sources that are small entities, a small entity is defined as: (1) A small business according to SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Small Business Administration size standards for clay ceramics manufacturing, by NAICS code, are shown in Table 8 of this preamble.

TABLE 8.—SMALL BUSINESS SIZE STANDARDS FOR CLAY CERAMICS MANUFACTURING

| NAICS code | Size standard, number of employees |
|---|---|
| 326191 | 500 |
| 327111 | 750 |
| 327112 | 500 |
| 327122 | 500 |
| 327123 | 500 |
| 327125 | 750 |
| 335121 | 500 |
| 421220 | 100 |
| 421320 | 100 |

Based on SBA NAICS-based size definitions and reported sales and employment data, the EPA identified 13 of the 29 companies owning clay ceramics manufacturing facilities as small businesses. Because the proposed rule does not include emissions limits or other requirements for existing kilns in the clay ceramics manufacturing source category, large or small, a firm's existing kilns will not be impacted by the proposed rule. One new ceramic tile manufacturing source and one new sanitaryware manufacturing source are projected to be constructed in the first five years following promulgation of the rule. Industry compliance costs associated with these sources are expected to be less than 0.1 percent of industry value of shipments for each of these industry segments. The share of costs to sales generated from the output produced by the new ceramic tile manufacturing source is expected to be less than 1.5 percent. No level of cost-to-sales for the new sanitaryware manufacturing source could be developed due to the diversity of product types produced. Thus, new clay ceramics manufacturing sources are expected to face positive compliance costs; however, we cannot determine with certainty whether these sources will be built by large or small companies. Regardless, impacts at the company level are not expected to be significant for a substantial number of small entities.

3. RFA Certification

In summary, this action will regulate two source categories that include 90 small business companies out of 119 total companies that own BSCP and clay ceramics manufacturing facilities. The mean annual compliance cost for the BSCP manufacturing and clay ceramics manufacturing source categories, as a share of sales, for small businesses is 0.0 percent, and the median is 0.0 percent, with a range of 0.0 percent to 5.3 percent. Seventy-nine of the 90 small businesses will incur no costs. One small firm is projected to have compliance costs between 1 and 3 percent of their sales, and eight small firms are projected to have cost-to-sales ratios greater than 3 percent. No facilities owned by affected small firms are expected to close after implementation of this action. Industry compliance costs associated with the 17 new BSCP and clay ceramics manufacturing sources projected to be constructed during the five years after promulgation of this action are anticipated to be less than 0.5 percent of each industry's value of shipments.

After considering the economic impacts of today's proposed rule on small entities in these two source categories, I certify that this action will not have a significant impact on a substantial number of small entities. Although the proposed rule will not have a significant economic impact on a substantial number of small entities, we have nonetheless worked aggressively to minimize the impact of the proposed rule on small entities, consistent with our obligations under the CAA. For the BSCP manufacturing source category, we exercised flexibility in minimizing impacts on small entities through subcategorization of existing tunnel kilns by size, which still benefits the environment by reducing emissions from the larger kilns. Input from small entities within the BSCP manufacturing source category was solicited during the data-gathering phase of the rulemaking process.

In addition, for the BSCP manufacturing source category, we contacted the small entities estimated to

incur impacts in excess of 1 percent of sales to explain the proposal's regulatory approach, as well as a potential alternative to installing an APCD. Facilities with tunnel kilns operating at or near 10 tph could accept a permit condition that restricts kiln production to less than 10 tph and, therefore, places the kiln in the subcategory unaffected by the standards for existing kilns.

For both the BSCP manufacturing and clay ceramics manufacturing source categories, we provided flexibility by offering a choice of compliance options. Compliance options include mass emission limits or percent reduction limits for HF and HCl. Compliance with the proposed emission limits can be achieved through use of a DIFF, DLS/FF, WS, or equivalent control device. The various control device options provide an opportunity to determine the most suitable and cost-effective control option for a kiln given the specifics of the facility site. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*H. Paperwork Reduction Act*

The information collection requirements in the proposed rules will be submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document for each of the proposed rules (ICR No. 2022.01 for BSCP manufacturing and ICR No. 2023.01 for clay ceramics manufacturing), and a copy of either document may be obtained from Sandy Farmer, by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; by e-mail at farmer.sandy@epa.gov; or by calling (202) 260–2740. You may also download a copy off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in 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 EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

The proposed rules would not require any notifications or reports beyond those required by the NESHAP General Provisions. The recordkeeping requirements require only the specific information needed to assure compliance.

The annual monitoring, reporting, and recordkeeping burden for the collection of information required by the proposed BSCP manufacturing rule (averaged over the first 3 years after the effective date of the final rule) is estimated to be 7,273 labor hours per year at a total annual labor cost of $334,000. This burden estimate includes a one-time submission of an OM&M plan; one-time submission of a SSMP, with immediate reports for any event when the procedures in the plan were not followed; semiannual compliance reports; maintenance inspections; notifications; and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $217,500, with operation and maintenance costs of $16,900/yr.

The annual monitoring, reporting, and recordkeeping burden for the collection of information required by the proposed clay ceramics manufacturing rule (averaged over the first 3 years after the effective date of the final rule) is estimated to be 238 labor hours per year at a total annual labor cost of $10,900. This burden estimate includes a one-time submission of an OM&M plan; one-time submission of a SSMP, with immediate reports for any event when the procedures in the plan were not followed; semiannual compliance reports; maintenance inspections; notifications; and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR are estimated at $4,300, with operation and maintenance costs of $400/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on 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. Send comments on either ICR to the Director, Office of Environmental Information, Collection Strategies Division (2822); U.S. EPA; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs; Office of Management and Budget; 725 17th Street 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 July 22, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by August 21, 2002. The final rulemaking action will respond to any OMB or public comments on the information collection requirements contained in these proposals.

*I. National Technology Transfer and Advancement Act of 1995*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rules involve technical standards. The EPA proposes in these rules to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 4, 5, 26, and 26A of 40 CFR part 60, appendix A. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA

methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, and 2G. The search and review results have been documented and are in the dockets for the proposed rules.

The search for emission measurement procedures identified 14 voluntary consensus standards potentially applicable to the proposed rules. The EPA determined that 11 of these 14 standards were impractical alternatives to EPA test methods for the purposes of the proposed rules. Therefore, the EPA does not propose to adopt these standards today. The reasons for this determination for the 11 standards are discussed in the dockets for the proposed rules.

The following three of the 14 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the proposed rules because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 1 (and possibly 2); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and an ASTM impinger method for measuring HCl. While we are not proposing to include these three voluntary consensus standards in today's proposed rules, the EPA will consider the standards when final.

The EPA takes comment on the compliance demonstration requirements in the proposed rules and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commentors should also explain why the proposed rules should adopt these voluntary consensus standards 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).

Table 3 of the proposed BSCP rule and Table 3 of the proposed clay ceramics rule list the EPA testing methods included in the proposed rules. Under § 63.7(f), 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**

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

Dated: June 17, 2002.

**Christine Todd Whitman,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is 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 JJJJJ to read as follows:

**Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing**

Sec.

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63.8380 What is the purpose of this subpart?
63.8385 Am I subject to this subpart?
63.8390 What parts of my plant does this subpart cover?
63.8395 When do I have to comply with this subpart?

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63.8405 What emission limitations must I meet?
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**Other Requirements and Information**

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**Tables to Subpart JJJJJ of Part 63**

Table 1 to Subpart JJJJJ of Part 63—Emission Limits
Table 2 to Subpart JJJJJ of Part 63—Operating Limits
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Table 4 to Subpart JJJJJ of Part 63—Initial Compliance with Emission Limitations
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Table 7 to Subpart JJJJJ of Part 63—Applicability of General Provisions to Subpart JJJJ

## Subpart JJJJJ—National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing

### What This Subpart Covers

#### § 63.8380 What is the purpose of this subpart?

This subpart establishes national emission limitations for hazardous air pollutants (HAP) emitted from brick and structural clay products (BSCP) manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

#### § 63.8385 Am I subject to this subpart?

You are subject to this subpart if you own or operate a BSCP manufacturing facility that is, is located at, or is part of, a major source of HAP emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A BSCP manufacturing facility is a plant site that manufactures brick (face brick, structural brick, brick pavers, other brick) and/or structural clay products (clay pipe; roof tile; extruded floor and wall tile; or other extruded, dimensional clay products). Brick and structural clay products manufacturing facilities typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes.

(b) A major source of HAP emissions is any stationary source or group of

stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

#### § 63.8390 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at a BSCP manufacturing facility.

(b) The existing affected source is an existing tunnel kiln with a design capacity equal to or greater than 9.07 megagrams per hour (Mg/hr) (10 tons per hour (tph)) of fired product according to paragraphs (b)(1) through (3) of this section.

(1) For existing tunnel kilns that do not have sawdust dryers, the kiln exhaust process stream (*i.e.,* the only process stream) is subject to the requirements of this subpart.

(2) For existing tunnel kilns that duct exhaust to sawdust dryers prior to July 22, 2002, only the kiln exhaust process stream (i.e., the process stream that exhausts directly to the atmosphere or to an air pollution control device (APCD)) is subject to the requirements of this subpart. As such, any process stream that is ducted to a sawdust dryer is not subject to these requirements.

(3) For existing tunnel kilns that first duct exhaust to sawdust dryers on or after July 22, 2002, all of the exhaust (i.e., all process streams) is subject to the requirements of this subpart.

(c) An existing tunnel kiln whose design capacity is increased such that it is equal to or greater than 9.07 Mg/hr (10 tph) of fired product is subject to the requirements of this subpart.

(d) An existing tunnel kiln with a federally enforceable permit condition that restricts kiln operation to less than 9.07 Mg/hr (10 tph) of fired product on a 30-day rolling average basis is not subject to the requirements of this subpart.

(e) Each new or reconstructed tunnel kiln is an affected source regardless of design capacity. All process streams from each new or reconstructed tunnel kiln are subject to the requirements of this subpart.

(f) Kilns that are used exclusively for research and development (R&D) and are not used to manufacture products for commercial sale are not subject to the requirements of this subpart.

(g) Kilns that are used exclusively for setting glazes on previously fired products are not subject to the requirements of this subpart.

(h) A source is a new affected source if construction of the affected source began after July 22, 2002, and you met the applicability criteria at the time you began construction.

(i) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(j) An affected source is existing if it is not new or reconstructed.

#### § 63.8395 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If the initial startup of your affected source is before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the emission limitations for new and reconstructed sources in this subpart no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) If the initial startup of your affected source is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the emission limitations for new and reconstructed sources in this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than [3 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart according to paragraphs (c)(1) and (2) of this section.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the existing facility must be in compliance with this subpart by 3 years after the date the area source becomes a major source.

(d) If you have a new area source (i.e., an area source for which construction or reconstruction was commenced after July 22, 2002) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(e) You must meet the notification requirements in § 63.8480 according to the schedule in § 63.8480 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

### Emission Limitations

#### § 63.8405 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

#### § 63.8410 What are my options for meeting the emission limitations?

To meet the emission limitations in Tables 1 and 2 to this subpart, you must use one or more of the options listed in paragraphs (a) and (b) of this section.

(a) *Emissions control system.* Use an emissions capture and collection system and an APCD and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart, and that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(b) *Process changes.* Use low-HAP raw materials or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart.

### General Compliance Requirements

#### § 63.8420 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.8395 and the date upon which continuous monitoring systems (CMS) (e.g., continuous parameter monitoring systems) have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) You must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.8425.

(e) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 7 to this subpart.

**§ 63.8425 What do I need to know about operation, maintenance, and monitoring plans?**

(a) You must prepare, implement, and revise as necessary an OM&M plan that includes the information in paragraph (b) of this section. Your OM&M plan must be available for inspection by the permitting authority upon request.

(b) Your OM&M plan must include, as a minimum, the information in paragraphs (b)(1) through (12) of this section.

(1) Each process and APCD to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The limits for each parameter that represent continuous compliance with the emission limitations in § 63.8405. The limits must be based on values of the monitored parameters recorded during performance tests.

(4) Procedures for the proper operation and routine and long-term maintenance of each process unit and APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(5) Procedures for installing the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last APCD).

(6) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(7) Continuous monitoring system performance evaluation procedures and acceptance criteria (*e.g.,* calibrations).

(8) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8450 and 63.8(c)(1), (3), (4)(ii), (7), and (8).

(9) Continuous monitoring system data quality assurance procedures consistent with the requirements in § 63.8(d).

(10) Continuous monitoring system recordkeeping and reporting procedures consistent with the requirements in § 63.10(c), (e)(1), and (e)(2)(i).

(11) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (b)(11)(i) through (iii) of this section.

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended, and corrective actions were initiated and completed.

(12) Procedures for keeping records to document compliance.

(c) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b).

(2) After completing the performance tests to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(d) If you are revising the inspection and maintenance procedures in your OM&M plan, you do not need to conduct a new performance test.

**Testing and Initial Compliance Requirements**

**§ 63.8435 By what date must I conduct performance tests?**

You must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8395 and according to the provisions in § 63.7(a)(2).

**§ 63.8440 When must I conduct subsequent performance tests?**

(a) You must conduct a performance test before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test.

(b) You must conduct a performance test when you want to change the parameter value for any operating limit specified in your OM&M plan.

**§ 63.8445 How do I conduct performance tests and establish operating limits?**

(a) You must conduct each performance test in Table 3 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and calibrate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 3 to this subpart.

(d) You must test while operating at the maximum production level.

(e) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(f) You must conduct at least three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(g) You must use the data gathered during the performance test and the equations in paragraphs (g)(1) and (2) of this section to determine compliance with the emission limitations.

(1) To determine compliance with the production-based hydrogen fluoride (HF), hydrogen chloride (HCl), and particulate matter (PM) emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of production for each test run using Equation 1 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 1)}$$

Where:

MP = mass per unit of production, kilograms (pounds) of pollutant per megagram (ton) of fired product

ER = mass emission rate of pollutant (HF, HCl, or PM) during each performance test run, kilograms (pounds) per hour

P = production rate during each performance test run, megagrams (tons) of fired product per hour.

(2) To determine compliance with any of the emission limits based on percent reduction across an emissions control system in Table 1 to this subpart, you must calculate the percent reduction for each test run using Equation 2 of this section:

$$PR = \frac{ER_i - ER_o}{ER_i}(100) \qquad \text{(Eq. 2)}$$

Where:

PR = percent reduction, percent

$ER_i$ = mass emission rate of specific HAP (HF or HCl) entering the APCD, kilograms (pounds) per hour

$ER_o$ = mass emission rate of specific HAP (HF or HCl) exiting the APCD, kilograms (pounds) per hour.

(h) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you as specified in Table 3 to this subpart.

(i) For each affected kiln that is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means

of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (i)(1)(i) through (iv) of this section.

(i) A description of the alternative APCD or process changes.

(ii) The type of monitoring device or procedure that will be used.

(iii) The operating parameters that will be monitored.

(iv) The frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(2) Establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring procedures request and, as applicable, as specified in Table 3 to this subpart.

**§ 63.8450 What are my monitoring installation, operation, and maintenance requirements?**

(a) You must install, operate, and maintain each CMS according to your OM&M plan and the requirements in paragraphs (a)(1) through (5) of this section.

(1) Conduct a performance evaluation of each CMS according to your OM&M plan.

(2) The CMS must complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, or out-of-control periods).

(3) Determine and record the 3-hour block averages of all recorded readings, calculated after every 3 hours of operation as the average of the previous 3 operating hours. To calculate the average for each 3-hour average period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, or out-of-control periods).

(4) Record the results of each inspection, calibration, and validation check.

(5) At all times, maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(b) For each temperature monitoring device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (b)(1) through (7) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) Use a temperature sensor with a minimum measurement sensitivity of 2.2°C (4.0°F) or 0.75 percent of the temperature value, whichever is larger.

(3) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(4) If a chart recorder is used, it must have a sensitivity in the minor division of at least 11.1°C (20°F).

(5) At least semiannually, perform an electronic calibration according to the procedures in the manufacturer's owners manual. Following the electronic calibration, conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7oC (30.1oF) of the process temperature sensor's reading.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating temperature range, conduct calibration and validation checks or install a new temperature sensor.

(7) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) For each liquid flow measurement device (e.g., to determine dry lime scrubber/fabric filter water injection rate or wet scrubber liquid flowrate), you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (c)(1) through (3) of this section.

(1) Locate the flow sensor in a position that provides a representative flowrate.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the liquid flowrate.

(3) At least semiannually, conduct a flow sensor calibration check.

(d) For each pressure measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (d)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check the pressure tap daily to ensure that it is not plugged.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating pressure range, conduct calibration checks or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(e) For each pH measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (e)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(f) For each bag leak detection system, you must meet the requirements in paragraphs (f)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (MD–19), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Continuous Emission Monitoring. Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the ''Fabric Filter Bag Leak Detection Guidance.''

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in your OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition. Record each adjustment.

(11) Record the results of each inspection, calibration, and validation check.

(g) For each lime or chemical feed rate measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (g)(1) and (2) of this section.

(1) Locate the measurement device in a position that provides a representative feed rate measurement.

(2) At least semiannually, conduct a calibration check.

(h) Requests for approval of alternate monitoring procedures must meet the requirements in §§ 63.8445(i) and 63.8(f).

#### § 63.8455 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8445 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8480(e).

### Continuous Compliance Requirements

#### § 63.8465 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for periods of monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities for purposes of calculating data averages. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. You must use all the valid data collected during all other periods in assessing compliance of the APCD and associated control system. Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation of the monitoring requirements.

#### § 63.8470 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with each emission limit and operating limit in Tables 1 and 2 to this subpart that applies to you according to the methods specified in Table 5 to this subpart.

(b) For each affected kiln that is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart, and each operating limit established as required in § 63.8445(i)(2) according to the methods specified in your approved alternative monitoring procedures request, as described in §§ 63.8445(i)(1) and 63.8(f).

(c) You must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8485.

(d) During periods of startup, shutdown, and malfunction, you must operate according to your SSMP.

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to your SSMP and your OM&M plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

### Notifications, Reports, and Records

#### § 63.8480 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9 (b) through (e), (g)(1), and (h) that apply to you, by the dates specified.

(b) As specified in § 63.9(b)(2) and (3), if you start up your affected source before the [DATE OF PUBLICATION OF THE FINAL RULE IN THE Federal Register], you must submit an Initial Notification not later than 120 calendar days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE Federal Register].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE Federal Register], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test as specified in Table 3 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) and (2) of this section.

(1) For each compliance demonstration that includes a

performance test conducted according to the requirements in Table 3 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) and (ii) of this section in your Notification of Compliance Status.

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) For each APCD that includes a fabric filter, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.8450(f).

**§ 63.8485 What reports must I submit and when?**

(a) You must submit each report in Table 6 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 6 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8395 and ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP and OM&M plan, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limits or operating limits) that apply to you, the compliance report must contain a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, the compliance report must contain a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission limitation (emission limit or operating limit) occurring at an affected source where you are using a CMS to comply with the emission limitations in this subpart, you must include the information in paragraphs (c)(1) through (4) and paragraphs (e)(1) through (13) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) The date and time that each malfunction started and stopped.

(3) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(4) The date, time and duration that each CMS was out-of-control, including the information in your OM&M plan.

(5) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CMS.

(12) The date of the latest CMS certification or audit.

(13) A description of any changes in CMS, processes, or control equipment since the last reporting period.

(f) If you have obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 6 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report

deviations from permit requirements to the permit authority.

**§ 63.8490 What records must I keep?**

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Table 5 to this subpart to show continuous compliance with each emission limitation that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (6) of this section.

(1) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(2) For each deviation of an operating limit parameter value, the date, time, and duration of the deviation, a brief explanation of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction.

(3) For each affected source, records of production rates on a fired-product basis.

(4) Records for any approved alternative monitoring or test procedures.

(5) Records of maintenance and inspections performed on the APCD.

(6) Current copies of your SSMP and OM&M plan, including any revisions, with records documenting conformance.

**§ 63.8495 In what form and how long must I keep my records?**

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

**Other Requirements and Information**

**§ 63.8505 What parts of the General Provisions apply to me?**

Table 7 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

**§ 63.8510 Who implements and enforces this subpart?**

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated 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 section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.8385 and 63.8390, the compliance date requirements in § 63.8395, and the non-opacity emission limitations in § 63.8405.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

**§ 63.8515 What definitions apply to this subpart?**

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

*Air pollution control device (APCD)* means any equipment that reduces the quantity of a pollutant that is emitted to the air.

*Bag leak detection system* means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

*Brick and structural clay products (BSCP) manufacturing facility* means a plant site that manufactures brick (face brick, structural brick, brick pavers, other brick) and/or structural clay products (clay pipe; roof tile; extruded floor and wall tile; or other extruded, dimensional clay products). Brick and structural clay products manufacturing facilities typically process raw clay and shale, form the processed materials into bricks or shapes, and dry and fire the bricks or shapes.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Dry lime injection fabric filter (DIFF)* means an air pollution control device that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

*Dry lime scrubber/fabric filter (DLS/FF)* means an air pollution control device that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems typically include recirculation of some of the sorbent.

*Emission limitation* means any emission limit or operating limit.

*Fabric filter* means an air pollution control device used to capture PM by filtering a gas stream through filter media; also known as a baghouse.

*Kiln exhaust process stream* means the portion of the exhaust from a tunnel kiln that exhausts directly to the atmosphere (or to an air pollution control device), rather than to a sawdust dryer.

*Particulate matter (PM)* means, for purposes of this subpart, emissions of PM that serve as a measure of total particulate emissions, as measured by Method 5 (40 CFR part 60, appendix A),

and as a surrogate for metal HAP contained in the particulates including, but not limited to, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

*Plant site* means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

*Research and development kiln* means any kiln whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale.

*Responsible official* means responsible official as defined in 40 CFR 70.2.

*Tunnel kiln* means any continuous kiln that is used to fire BSCP. Some tunnel kilns have two process streams, including: a process stream that exhausts directly to the atmosphere or to an air pollution control device, and a process stream in which the kiln exhaust is ducted to a sawdust dryer where it is used to dry sawdust before being emitted to the atmosphere.

*Tunnel kiln design capacity* means the maximum amount of brick that a kiln is designed to produce in 1 hour. If a kiln is modified to increase the capacity, the design capacity is considered to be the capacity following modifications.

*Wet scrubber (WS)* means an *air pollution control device* that uses water, which may include caustic additives or other chemicals, as the sorbent. Wet scrubbers may use any of various design mechanisms to increase the contact between exhaust gases and the sorbent.

As stated in § 63.8405, you must meet each emission limit in the following table that applies to you:

TABLE 1 TO SUBPART JJJJJ OF PART 63.—EMISSION LIMITS

| For each . . . | You must meet the following emission limits . . . | Or you must comply with the following . . . |
|---|---|---|
| 1. Existing tunnel kiln with a design capacity of ≥9.07 Mg/hr (10 tph) of fired product, excluding any process stream that is ducted to a sawdust dryer prior to July 22, 2002; or including any process stream that exhausts directly to the atmosphere or to an APCD and any process stream that is first ducted to a sawdust dryer on or after July 22, 2002. | a. HF emissions must not exceed 0.014 kilograms per megagram (kg/Mg) (0.027 pounds per ton (lb/ton)) of fired product. | Reduce uncontrolled HF emissions by at least 95 percent. |
| | b. HCl emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product. | Reduce uncontrolled HCl emissions by at least 90 percent. |
| | c. PM emissions must not exceed 0.06 kg/Mg (0.12 lb/ton) of fired product. | Not applicable. |
| 2. New or reconstructed tunnel kiln, regardless of design capacity and including all process streams. | a. HF emissions must not exceed 0.014 kg/Mg (0.027 lb/ton) of fired product. | Reduce uncontrolled HF emissions by at least 95 percent. |
| | b. HCl emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product. | Reduce uncontrolled HCl emissions by at least 90 percent. |
| | c. PM emissions must not exceed 0.060 kg/Mg (0.12 lb/ton) of fired product. | Not applicable. |

As stated in § 63.8405, you must meet each operating limit in the following table that applies to you:

TABLE 2 TO SUBPART JJJJJ OF PART 63.—OPERATING LIMITS

| For each . . . | You must . . . |
|---|---|
| 1. Kiln equipped with a dry lime injection fabric filter (DIFF) or dry lime scrubber/fabric filter (DLS/FF). | a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; and<br>b. Maintain the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature, plus 14°C (25°F), established during the performance test; and<br>c. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting at or above the level established during the performance test for continuous injection systems. |
| 2. Kiln equipped with a DLS/FF. | Maintain the average water injection rate for each 3-hour block period at or above the level established during the performance test. |
| 3. Kiln equipped with a wet scrubber (WS). | a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and<br>b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and |

TABLE 2 TO SUBPART JJJJJ OF PART 63.—OPERATING LIMITS—Continued

| For each . . . | You must . . . |
|---|---|
| | c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and<br>d. If chemicals are added to the scrubber water, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the performance test. |

As stated in § 63.8445, you must conduct each performance test in the following table that applies to you:

TABLE 3 TO SUBPART JJJJJ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

| For each . . . | You must . . . | Using . . . | According to the following requirements . . . |
|---|---|---|---|
| 1. Kiln ..... | a. Select locations of sampling ports and the number of traverse points. | Method 1 or 1A of 40 CFR part 60, appendix A. | Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources. If you choose to meet the percent emission reduction requirements for HF or HCl, a sampling site must also be located at the APCD inlet. |
| | b. Determine velocities and volumetric flow rate. | Method 2 of 40 CFR part 60, appendix A. | You may use Method 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A. |
| | c. Conduct gas molecular weight analysis. | Method 3 of 40 CFR part 60, appendix A. | You may use 3A or 3B of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A. |
| | d. Measure moisture content of the stack gas. | Method 4 of 40 CFR part 60, appendix A. | |
| | e. Measure HF and HCl emissions. | Method 26A of 40 CFR part 60, appendix A. | Conduct the test while operating at the maximum production level. You may use Method 26 of 40 CFR part 60, appendix A, as an alternative to using Method 26A of 40 CFR part 60, appendix A, when no acid PM (*e.g.,* HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present. |
| | f. Measure PM emissions .. | Method 5 of 40 CFR part 60, appendix A. | Conduct the test while operating at the maximum production level. |
| 2. Kiln that is complying with production-based emission limits. | Determine the production rate during each test run in order to determine compliance with production-based emission limits. | Production data collected during the performance tests (e.g., # of pushes per hour, # of bricks per kiln car, weight of a typical fired brick). | You must measure and record the production rate, on a fired-product basis, of the affected source for each of the three test runs. |
| 3. Kiln equipped with a DIFF or DLS/FF. | a. Establish the operating limit for the average fabric filter inlet temperature. | Data from the temperature measurement device during the performance test. | You must continuously measure the temperature at the inlet to the fabric filter, determine and record the block average temperatures for the three test runs, and determine and record the 3-hour block average of the recorded temperature measurements for the three test runs. |
| | b. Establish the operating limit for the lime feeder setting. | Data from the lime feeder during the performance test. | For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs. |
| 4. Kiln equipped with a DLS/FF. | Establish the operating limit for the average water injection rate. | Data from the water injection rate measurement device during the performance test. | You must continuously measure the water injection rate, determine and record the block average water injection rate values for the three test runs, and determine and record the 3-hour block average of the recorded water injection rate measurements for the three test runs. |

TABLE 3 TO SUBPART JJJJJ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

| For each . . . | You must . . . | Using . . . | According to the following requirements . . . |
|---|---|---|---|
| 5. Kiln equipped with a WS | a. Establish the operating limit for the average scrubber pressure drop. | Data from the pressure drop measurement device during the performance test. | You must continuously measure the scrubber pressure drop, determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs. |
| | b. Establish the operating limit for the average scrubber liquid pH. | Data from the pH measurement device during the performance test. | You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs. |
| | c. Establish the operating limit for the average scrubber liquid flow rate. | Data from the flow rate measurement device during the performance test. | You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. |
| 6. Kiln equipped with a WS that includes chemical addition to the water. | Establish the operating limit for the average scrubber chemical feed rate. | Data from the chemical feed rate measurement device during the performance test. | You must continuously measure the scrubber chemical feed rate, determine and record the block average chemical feed rate values for the three test runs, and determine and record the 3-hour block average of the recorded chemical feed rate measurements for the three test runs. |

As stated in § 63.8455, you must demonstrate initial compliance with each emission limitation that applies to you according to the following table:

TABLE 4 TO SUBPART JJJJJ OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

| For each . . . | For the following emission limitation . . . | You have demonstrated initial compliance if . . . |
|---|---|---|
| 1. Tunnel kiln ..... | a. HF emissions must not exceed 0.014 kg/Mg (0.027 lb/ton) of fired product; or uncontrolled HF emissions must be reduced by at least 95 percent; and | i. The HF emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in § 63.8445(g)(1), do not exceed 0.014 kg/Mg (0.027 lb/ton); or Uncontrolled HF measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test are reduced by at least be reduced by at 95 percent, according to the calculations least in § 63.8445(g)(2); and<br>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HF emissions did not exceed 0.014 kg/Mg (0.027 lb/ton) or uncontrolled HF emissions were reduced by at least 95 percent. |
| | b. HCl emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product; or uncontrolled HC1 emissions must be reduced by at least 90 percent; and | The HC1 emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in 63.8445(g)(1), do not exceed 0.019 kg/Mg (0.037 lb/ton); or uncontrolled HC1 emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test are reduced by at least 90 percent, according to the calculations in § 63.8445(g)(2); and<br>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HC1 emissions did not exceed 0.019 kg/Mg (0.037 lb/ton) or uncontrolled HC1 emissions were reduced by at least 90 percent. |
| | c. PM emissions must not exceed 0.06 kg/Mg (0.12 lb/ton) of fired product. | i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in § 63.8445(g)(1), do not exceed 0.06 kg/Mg (0.12 lb/ton); and<br>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.06 kg/Mg (0.12 lb/ton). |

As stated in § 63.8470, you must demonstrate continuous compliance with each emission limit and operating limit that applies to you according to the following table:

TABLE 5 TO SUBPART JJJJJ OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND OPERATING LIMITS

| For each . . . | For the following emission limits and operating limits . . . | You must demonstrate continuous compliance by . . . |
|---|---|---|
| 1. Kiln equipped with a DIFF or DLS/FF. | a. Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for kilns equipped with DIFF or DLS/FF. | i. Initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time taken by you to initiate corrective action; and<br><br>ii. Collecting the fabric filter inlet temperature data according to §63.8450(a); reducing the fabric filter inlet temperature data to 3-hour block averages according to §63.8450(a); maintaining the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature, plus 14°C (25°F), established during the performance test; and<br><br>iii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&M plan; recording the feeder setting once each shift of operation to verify that the feeder setting is being maintained at or above the level established during the performance test. |
| 2. Kiln equipped with a DLS/FF ..... | Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for kilns equipped with DLS/FF. | Collecting the water injection rate data according to §63.8450(a); reducing the water injection rate data to 3-hour block averages according to §63.8450(a); maintaining the average water injection rate for each 3-hour block period at or above the average water injection rate established during the performance test. |
| 3. Kiln equipped with a WS ..... | a. Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for kilns equipped with WS. | i. Collecting the scrubber pressure drop data according to §63.8450(a); reducing the scrubber pressure drop data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and<br><br>ii. Collecting the scrubber liquid pH data according to §63.8450(a); reducing the scrubber liquid pH data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and<br><br>iii. Collecting the scrubber liquid flow rate data according to §63.8450(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and<br><br>iv. If chemicals are added to the scrubber water, collecting the scrubber chemical feed rate data according to §63.8450(a); reducing the scrubber chemical feed rate data to 3-hour block averages according to §63.8450(a); maintaining the average scrubber |

As stated in §63.8485, you must submit each report that applies to you according to the following table:

TABLE 6 TO SUBPART JJJJJ OF PART 63.—REQUIREMENTS FOR REPORTS

| You must submit . . . | The report must contain . . . | You must submit the report . . . |
|---|---|---|
| 1. A compliance report | a. If there are no deviations from any emission limitations (emission limit, operating limit) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period. If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, a statement that there were no periods during which the CMS was out- of-control during the reporting period. | Semiannually according to the requirements in § 63.8485(b) |
| | b. If you have a deviation from any emission limitation (emission limit, operating limit) during the reporting period, the report must contain the information in § 63.8485(d) or (e). If there were periods during which the CMS was out-of-control, as specified in your OM&M plan, the report must contain the information in § 63.8485(e). | Semiannually according to the requirements in § 63.8485(b) |
| | c. If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in § 63.10(d)(5)(i). | Semiannually according to the requirements in § 63.8485(b) |
| 2. An immediate startup, shutdown, and malfunction report if you took actions during a startup, shutdown, or malfunction during the reporting period that are not consistent with your SSMP. | a. Actions taken for the event according to the requirements in § 63.10(d)(5)(ii). | By fax or telephone within 2 working days after starting actions inconsistent with the plan |
| | b. The information in § 63.10(d)(5)(ii) | By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority |

As stated in § 63.8505, you must comply with the General Provisions in §§ 63.1–63.15 that apply to you according to the following table:

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ

| Citation | Subject | Brief Description | Applies to Subpart JJJJJ |
|---|---|---|---|
| § 63.1 | Applicability | | Yes. |
| § 63.2 | Definitions | | Yes. |
| § 63.3 | Units and Abbreviation | | Yes. |
| § 63.4 | Prohibited Activities | Compliance date; circumvention, severability. | Yes. |
| § 63.5 | Construction/Reconstruction | Applicability; applications; approvals | Yes. |
| § 63.6(a) | Applicability | General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major. | Yes. |
| § 63.6(b)(1)–(4) | Compliance Dates for New and Reconstructed sources. | Standards apply at effective date; 3 years after effective date; Upon startup; 10 years after construction or reconstruction commences for section 112(f). | Yes. |
| § 63.6(b)(5) | Notification | | Yes. |
| § 63.6(b)(6) | [Reserved]. | | |
| § 63.6(b)(7) | Compliance Dates for New and Reconstructed Area Sources That Become Major. | Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources. | Yes. |

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

| Citation | Subject | Brief Description | Applies to Subpart JJJJJ |
|---|---|---|---|
| § 63.6(c)(1)–(2) | Compliance Dates for Existing Sources | Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension. | Yes. |
| § 63.6(c)(3)–(4) | [Reserved]. | | |
| § 63.6(c)(5) | Compliance Dates for Existing Area Sources That Become Major. | Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years). | Yes. |
| § 63.6(d) | [Reserved]. | | |
| § 63.6(e)(1)–(2) | Operation & Maintenance | Operate to minimize emissions at all times; correct malfunctions as soon as practicable; requirements independently enforceable; information Administrator will use to determine if operations and maintenance requirements were met. | Yes. |
| § 63.6(e)(3) | Startup, Shutdown, and Malfunction Plan (SSMP). | | Yes. |
| § 63.6(f)(1) | Compliance Except During SSM | You must comply with emissions standards at all times except during SSM. | Yes. |
| § 63.6(f)(2)–(3) | Methods for Determining Compliance | Compliance based on performance test, operation and maintenance plans, records, inspection. | Yes. |
| § 63.6(g) | Alternative Standard | Procedures for getting an alternative standard. | Yes. |
| § 63.6(h) | Opacity/Visible Emission (VE) Standards | | No, not applicable. |
| § 63.6(i) | Compliance Extension | Procedures and criteria for Administrator to grant compliance extension. | Yes. |
| § 63.6(j) | Presidential Compliance Exemption | President may exempt source category | Yes. |
| § 63.7(a)(1)–(2) | Performance Test Dates | Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule. | Yes. |
| § 63.7(a)(3) | § 114 Authority | Adminstrator may require a performance test under CAA § 114 at any time. | Yes. |
| § 63.7(b)(1) | Notification of Performance Test | Must notify Administrator 60 days before the test. | Yes. |
| § 63.7(b)(2) | Notification of Rescheduling | Must notify Administrator 5 days before scheduled date of rescheduled date. | Yes. |
| § 63.7(c) | Quality Assurance (QA) Test Plan | Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing. | Yes. |
| § 63.7(d) | Testing Facilities | | Yes. |
| § 63.7(e)(1) | Conditions for Conducting Performance Tests. | Performance tests must be conducted under representative conditions.<br>Cannot conduct performance tests during SSM; not a violation to exceed standard during SSM. | No, § 63.8445 specifies requirements.<br>Yes. |

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

| Citation | Subject | Brief Description | Applies to Subpart JJJJJ |
|---|---|---|---|
| 63.7(e)(2)–(3) | Conditions for Conducting Performance Tests. | Must conduct according to subpart and EPA test methods unless Administrator approved alternative; must have at least three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used. | Yes. |
| § 63.7(f) | Alternative Test Method | | Yes. |
| § 63.7(g) | Performance Test Data Analysis | | Yes. |
| § 63.7(h) | Waiver of Test | | Yes. |
| § 63.8(a)(1) | Applicability of Monitoring Requirements | | Yes. |
| § 63.8(a)(2) | Performance Specifications | Performance Specifications in appendix B of 40 CFR part 60 apply. | Yes. |
| § 63.8(a)(3) | [Reserved]. | | |
| § 63.8(a)(4) | Monitoring with Flares | | No, not applicable. |
| § 63.8(b)(1) | Monitoring | Must conduct monitoring according to standard unless Administrator approves alternative. | Yes. |
| § 63.8(b)(2)–(3) | Multiple Effluents and Multiple Monitoring System. | Specific requirements for installing and reporting on monitoring systems. | Yes. |
| § 63.8(c)(1) | Monitoring System Operation and Maintenance. | Maintenance consistent with good air pollution control practices. | Yes. |
| § 63.8(c)(1)(i) | Routine and Predictable SSM | Reporting requirements for SSM when action is described in SSMP. | Yes. |
| § 63.8(c)(1)(ii) | SSM not in SSMP | Reporting requirements for SSM when action is not described in SSMP. | Yes. |
| § 63.8(c)(1)(iii) | Compliance with Operation and Maintenance Requirements. | How Administrator determines if source complying with operation and maintenance requirements. | Yes. |
| § 63.8(c)(2)–(3) | Monitoring System Installation | Must install to get representative emission and parameter measurements. | Yes. |
| § 63.8(c)(4) | Continuous Monitoring System (CMS) Requirements. | | No, § 63.8465 specifies requirements. |
| § 63.8(c)(5) | Continuous Opacity Monitoring System (COMS) Minimum Procedures. | | No, not applicable. |
| § 63.8(c)(6) | CMS Requirements | | No, § 63.8425 specifies requirements. |
| § 63.8(c)(7)–(8) | CMS Requirements | | No, § 63.8425 specifies requirements. |
| § 63.8(d) | CMS Quality Control | | No, § 63.8425 specifies requirements. |
| § 63.8(e) | CMS Performance Evaluation | | No, § 63.8425 specifies requirements. |
| § 63.8(f)(1)–5) | Alternative Monitoring Method | Procedures for Administrator to approve alternative monitoring. | Yes. |
| § 63.8(f) | Alternative to Relative Accuracy | | No, not applicable. |
| § 63.8(g) | Data Reduction | | No, not applicable. |

TABLE 7 TO SUBPART JJJJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJJ—Continued

| Citation | Subject | Brief Description | Applies to Subpart JJJJJ |
|---|---|---|---|
| § 63.9(a) | Notification Requirements | | Yes. |
| § 63.9(b) | Initial Notification | | Yes. |
| § 63.9(c) | Request for Compliance Extension | | Yes. |
| § 63.9(d) | Notification of Special Compliance Requirements for New Source. | | Yes. |
| § 63.9(e) | Notification of Performance Test | Notify Administrator 60 days prior | Yes. |
| § 63.9(f) | Notification of VE/Opacity Test | | No, not applicable. |
| § 63.9(g)(1) | Additional Notification When Using CMS | | Yes. |
| § 63.9(g)(2)–(3) | Additional Notification When Using CMS | | No, not applicable. |
| § 63.9(h) | Notification of Compliance Status | | Yes. |
| § 63.9(i) | Adjustment of Submittal Deadlines | | Yes. |
| § 63.9(j) | Change in Previous Information | | Yes. |
| § 63.10(a) | Recordkeeping/Reporting | | Yes. |
| § 63.10(b)(1) | General Recordkeeping Requirements | | Yes. |
| § 63.10(b)(2)(1)–(v) | Records Related to Startup, Shutdown, and Malfunction. | | Yes. |
| § 63.10(b)(2)(vi)–(xii) and (xiv). | CMS Records | | Yes. |
| § 63.10(b)(2)(xiii) | Records | Records when using alternative to relative accuracy test. | No, not applicable. |
| § 63.10(b)(3) | Records | Applicability Determinations | Yes. |
| § 63.10(c)(1)–(15) | Records | | No, §§ 63.8425 and 63.8490 specify requirements. |
| § 63.10(d)(1) and (2) | General Reporting Requirements | Requirements for reporting | Yes. |
| § 63.10(d)(3) | Reporting Opacity or VE Observations | | No, not applicable. |
| § 63.10(d)(4) | Progress Reports | Must submit progress reports on schedule if under compliance extension.. | Yes. |
| § 63.10(d)(5) | Startup, Shutdown, and Malfunction Reports. | Contents and submission | Yes. |
| § 63.10(e)(1)–(3) | Additional CMS Reports | | No, §§ 63.8425 and 63.8485 specify requirements. |
| § 63.10(e)(4) | Reporting COMS data | | No, not applicable. |
| § 63.10(f) | Waiver for Recordkeeping/Reporting | | Yes. |
| § 63.11 | Flares | | No, not applicable. |
| § 63.12 | Delegation | | Yes. |
| § 63.13 | Addresses | | Yes. |
| § 63.14 | Incorporation by Reference | | Yes. |
| § 63.15 | Availability of Information | | Yes. |

3. Part 63 is amended by adding subpart KKKKK to read as follows:

**Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing**

Sec.

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## Subpart KKKKK—National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

### What This Subpart Covers

#### § 63.8530 What is the purpose of this subpart?

This subpart establishes national emission limitations for hazardous air pollutants (HAP) emitted from clay ceramics manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

#### § 63.8535 Am I subject to this subpart?

You are subject to this subpart if you own or operate a clay ceramics manufacturing facility that is, is located at, or is part of a major source of HAP emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A clay ceramics manufacturing facility is a plant site that manufactures pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware (*e.g.,* sinks and toilets). Clay ceramics manufacturing facilities typically process clay, shale, and various additives; form the processed materials into tile or sanitaryware shapes; and dry and fire the ceramic products. Glazes are applied to many tile and sanitaryware products.

(b) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

#### § 63.8540 What parts of my plant does this subpart cover?

(a) This subpart applies to each new or reconstructed affected source at a clay ceramics manufacturing facility.

(b) Each new or reconstructed tunnel kiln and roller kiln is an affected source.

(c) Kilns that are used exclusively for research and development (R&D) and are not used to manufacture products for commercial sale are not subject to the requirements of this subpart.

(d) Kilns that are used exclusively for setting glazes on previously fired products or for refiring are not subject to the requirements of this subpart.

(e) A source is a new affected source if construction of the affected source began after July 22, 2002, and you met the applicability criteria at the time you began construction.

(f) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

#### § 63.8545 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If the initial startup of your affected source is before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the emission limitations for new and reconstructed sources in this subpart no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) If the initial startup of your affected source is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], then you must comply with the emission limitations for new and reconstructed sources in this subpart upon initial startup of your affected source.

(b) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP by adding a new affected source or by reconstructing, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(c) If you have a new area source (i.e., an area source for which construction or reconstruction was commenced after July 22, 2002) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(d) You must meet the notification requirements in § 63.8630 according to the schedule in § 63.8630 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

### Emission Limitations

#### § 63.8555 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

**§ 63.8560 What are my options for meeting the emission limitations?**

To meet the emission limitations in Tables 1 and 2 to this subpart, you must use one or more of the options listed in paragraphs (a) and (b) of this section.

(a) *Emissions control system.* Use an emissions capture and collection system and an air pollution control device (APCD) and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart, and that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(b) *Process changes.* Use low-HAP raw materials or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the emission limits in Table 1 to this subpart.

**General Compliance Requirements**

**§ 63.8570 What are my general requirements for complying with this subpart?**

(a) You must be in compliance with the emission limitations (including operating limits) in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.8545 and the date upon which continuous monitoring systems (CMS) (*e.g.,* continuous parameter monitoring systems) have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) You must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.8575.

(e) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 7 to this subpart.

**§ 63.8575 What do I need to know about operation, maintenance, and monitoring plans?**

(a) You must prepare, implement, and revise as necessary an OM&M plan that includes the information in paragraph (b) of this section. Your OM&M plan must be available for inspection by the permitting authority upon request.

(b) Your OM&M plan must include, as a minimum, the information in paragraphs (b)(1) through (12) of this section.

(1) Each process and APCD to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(3) The limits for each parameter that represent continuous compliance with the emission limitations in § 63.8555. The limits must be based on values of the monitored parameters recorded during performance tests.

(4) Procedures for the proper operation and routine and long-term maintenance of each process unit and APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(5) Procedures for installing the CMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last APCD).

(6) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(7) Continuous monitoring system performance evaluation procedures and acceptance criteria (e.g., calibrations).

(8) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8600 and 63.8(c)(1), (3), (4)(ii), (7), and (8).

(9) Continuous monitoring system data quality assurance procedures consistent with the requirements in § 63.8(d).

(10) Continuous monitoring system recordkeeping and reporting procedures consistent with the requirements in § 63.10(c), (e)(1), and (e)(2)(i).

(11) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (b)(11)(i) through (iii) of this section.

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended, and corrective actions were initiated and completed.

(12) Procedures for keeping records to document compliance.

(c) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (c)(1) and (2) of this section.

(1) Submit a notification of performance test to the Administrator as specified in § 63.7(b).

(2) After completing the performance test to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(d) If you are revising the inspection and maintenance procedures in your OM&M plan, you do not need to conduct a new performance test.

**Testing and Initial Compliance Requirements**

**§ 63.8585 By what date must I conduct performance tests?**

You must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8545 and according to the provisions in § 63.7(a)(2).

**§ 63.8590 When must I conduct subsequent performance tests?**

(a) You must conduct a performance test before renewing your 40 CFR part 70 operating permit or at least every 5 years following the initial performance test.

(b) You must conduct a performance test when you want to change the parameter value for any operating limit specified in your OM&M plan.

**§ 63.8595 How do I conduct performance tests and establish operating limits?**

(a) You must conduct each performance test in Table 3 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and calibrate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 3 to this subpart.

(d) You must test while operating at the maximum production level.

(e) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(f) You must conduct at least three separate test runs for each performance

test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(g) You must use the data gathered during the performance test and the equations in paragraphs (g)(1) and (2) of this section to determine compliance with the emission limitations:

(1) To determine compliance with the production-based hydrogen fluoride (HF), hydrogen chloride (HCl), and particulate matter (PM) emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of production for each test run using Equation 1 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 1)}$$

Where:

MP = mass per unit production, kilograms (pounds) of pollutant per megagram (ton) of fired product

ER = mass emission rate of pollutant (HF, HCl, or PM) during each performance test run, kilograms (pounds) per hour

P = production rate during each performance test run, megagrams (tons) of fired product per hour.

(2) To determine compliance with any of the emission limits based on percent reduction across an emissions control system in Table 1 to this subpart, you must calculate the percent reduction for each test run using Equation 2 of this section:

$$PR = \frac{ER_i - ER_o}{ER_i}(100) \qquad \text{(Eq. 2)}$$

Where:

PR = percent reduction, percent

$ER_i$ = mass emission rate of specific HAP (HF or HCl) entering the APCD, kilograms (pounds) per hour

$ER_o$ = mass emission rate of specific HAP (HF or HCl) exiting the APCD, kilograms (pounds) per hour.

(h) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you as specified in Table 3 to this subpart.

(i) For each affected kiln that is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) and (2) of this section.

(1) Submit a request for approval of alternative monitoring procedures to the Administrator no later than the notification of intent to conduct a performance test. The request must contain the information specified in paragraphs (i)(1)(i) through (iv) of this section.

(i) A description of the alternative APCD or process changes.

(ii) The type of monitoring device or procedure that will be used.

(iii) The operating parameters that will be monitored.

(iv) The frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(2) Establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring procedures request and, as applicable, as specified in Table 3 to this subpart.

### § 63.8600 What are my monitoring installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CMS according to your OM&M plan and the requirements in paragraphs (a)(1) through (5) of this section.

(1) Conduct a performance evaluation of each CMS according to your OM&M plan.

(2) The CMS must complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally spaced data values (or at least 75 percent if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, or out-of-control periods).

(3) Determine and record the 3-hour block averages of all recorded readings, calculated after every 3 hours of operation as the average of the previous 3 operating hours. To calculate the average for each 3-hour average period, you must have at least 75 percent of the recorded readings for that period (not including startup, shutdown, malfunction, or out-of-control periods).

(4) Record the results of each inspection, calibration, and validation check.

(5) At all times, maintain the monitoring equipment including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(b) For each temperature monitoring device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (b)(1) through (7) of this section.

(1) Locate the temperature sensor in a position that provides a representative temperature.

(2) Use a temperature sensor with a minimum measurement sensitivity of 2.2°C (4.0°F) or 0.75 percent of the temperature value, whichever is larger.

(3) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(4) If a chart recorder is used, it must have a sensitivity in the minor division of at least 11.1°C (20°F).

(5) At least semiannually, perform an electronic calibration according to the procedures in the manufacturer's owners manual. Following the electronic calibration, conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 16.7°C (30.1°F) of the process temperature sensor's reading.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating temperature range, conduct calibration and validation checks or install a new temperature sensor.

(7) At least monthly, inspect all components for integrity and all electrical connections for continuity, oxidation, and galvanic corrosion.

(c) For each liquid flow measurement device (e.g., to determine dry lime scrubber/fabric filter water injection rate or wet scrubber liquid flow rate), you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (c)(1) through (3) of this section.

(1) Locate the flow sensor in a position that provides a representative flowrate.

(2) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the liquid flowrate.

(3) At least semiannually, conduct a flow sensor calibration check.

(d) For each pressure measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (d)(1) through (7) of this section.

(1) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(2) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(3) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(4) Check the pressure tap daily to ensure that it is not plugged.

(5) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(6) Any time the sensor exceeds the manufacturer's specified maximum operating pressure range, conduct

calibration checks or install a new pressure sensor.

(7) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(e) For each pH measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (e)(1) through (4) of this section.

(1) Locate the pH sensor in a position that provides a representative measurement of pH.

(2) Ensure the sample is properly mixed and representative of the fluid to be measured.

(3) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(4) At least monthly, inspect all components for integrity and all electrical connections for continuity.

(f) For each bag leak detection system, you must meet the requirements in paragraphs (f)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the ''Fabric Filter Bag Leak Detection Guidance,'' (EPA–454/R–98–015, September 1997). This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (MD–19), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center, Continuous Emission Monitoring. Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an audible alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the ''Fabric Filter Bag Leak Detection Guidance.''

(10) Following initial adjustment of the system, the sensitivity or range, averaging period, alarm set points, or alarm delay time may not be adjusted except as detailed in your OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition. Record each adjustment.

(11) Record the results of each inspection, calibration, and validation check.

(g) For each lime or chemical feed rate measurement device, you must meet the requirements in paragraphs (a)(1) through (5) and paragraphs (g)(1) and (2) of this section.

(1) Locate the measurement device in a position that provides a representative feed rate measurement.

(2) At least semiannually, conduct a calibration check.

(h) Requests for approval of alternate monitoring procedures must meet the requirements in §§ 63.8595(i) and 63.8(f).

#### § 63.8605 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limitation that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8595 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8630(e).

### Continuous Compliance Requirements

#### § 63.8615 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) Except for periods of monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, and malfunction when the affected source is operating.

(c) You may not use data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities for purposes of calculating data averages. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. You must use all the valid data collected during all other periods in assessing compliance of the APCD and associated control system. Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation of the monitoring requirements.

#### § 63.8620 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with each emission limit and operating limit in Tables 1 and 2 to this subpart that applies to you according to the methods specified in Table 5 to this subpart.

(b) For each affected kiln that is equipped with an APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart, and each operating limit established as required in § 63.8595(i)(2) according to the methods specified in your approved alternative monitoring procedures request, as described in §§ 63.8595(i)(1) and 63.8(f).

(c) You must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are

deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.8635.

(d) During periods of startup, shutdown, and malfunction, you must operate according to your SSMP.

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to your SSMP and your OM&M plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

**Notifications, Reports, and Records**

**§ 63.8630 What notifications must I submit and when?**

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e), (g)(1), and (h) that apply to you, by the dates specified.

(b) As specified in § 63.9(b)(2) and (3), if you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test as specified in Table 3 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) and (2) of this section.

(1) For each compliance demonstration that includes a performance test conducted according to the requirements in Table 3 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) and (ii) of this section in your Notification of Compliance Status:

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) For each APCD that includes a fabric filter, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.8600(f).

**§ 63.8635 What reports must I submit and when?**

(a) You must submit each report in Table 6 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 6 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8545 and ending on June 30 or December 31, and lasting at least 6 months, but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown or malfunction during the reporting period and you took actions consistent with your SSMP and OM&M plan, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limits or operating limits) that apply to you, the compliance report must contain a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, the compliance report must contain a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(d) For each deviation from an emission limitation (emission limit or operating limit) that occurs at an affected source where you are not using a CMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from an emission limitation (emission limit or operating limit) occurring at an affected source where you are using a CMS to comply with the emission limitations in this subpart, you must include the information in paragraphs (c)(1) through (4) and paragraphs (e)(1) through (13) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) The date and time that each malfunction started and stopped.

(3) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(4) The date, time and duration that each CMS was out-of-control, including the information in your OM&M plan.

(5) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(8) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CMS.

(12) The date of the latest CMS certification or audit.

(13) A description of any changes in CMS, processes, or control equipment since the last reporting period.

(f) If you have obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 6 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report deviations from permit requirements to the permit authority.

### § 63.8640 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Table 5 to this subpart to show continuous compliance with each emission limitation that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (6) of this section.

(1) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(2) For each deviation of an operating limit parameter value, the date, time, and duration of the deviation, a brief explanation of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction.

(3) For each affected source, records of production rates on a fired-product weight basis.

(4) Records for any approved alternative monitoring or test procedures.

(5) Records of maintenance and inspections performed on the APCD.

(6) Current copies of your SSMP and OM&M plan, including any revisions, with records documenting conformance.

### § 63.8645 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

## Other Requirements and Information

### § 63.8655 What parts of the General Provisions apply to me?

Table 7 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

### § 63.8660 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated 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 section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.8535 and 63.8540, the compliance date requirements in § 63.8545, and the non-opacity emission limitations in § 63.8555.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

### § 63.8665 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows:

*Air pollution control device (APCD)* means any equipment that reduces the quantity of a pollutant that is emitted to the air.

*Bag leak detection system* means an instrument that is capable of monitoring PM loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

*Clay ceramics manufacturing facility* means a plant site that manufactures pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware (e.g., sinks and toilets). Clay ceramics manufacturing facilities typically process clay, shale, and various

additives, form the processed materials into tile or sanitaryware shapes, and dry and fire the ceramic products. Glazes are applied to many tile and sanitaryware products.

*Deviation means* any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Dry lime injection fabric filter (DIFF)* means an air pollution control device that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

*Dry lime scrubber/fabric filter (DLS/FF)* means an air pollution control device that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems typically include recirculation of some of the sorbent.

*Emission limitation* means any emission limit or operating limit.

*Fabric filter* means an air pollution control device used to capture PM by filtering a gas stream through filter media; also known as a baghouse.

*Particulate matter (PM)* means, for purposes of this subpart, emissions of PM that serve as a measure of total particulate emissions, as measured by Method 5 (40 CFR part 60, appendix A), and as a surrogate for metal HAP contained in the particulates including, but not limited to, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

*Plant site* means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

*Research and development kiln* means any kiln whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale.

*Responsible official* means responsible official as defined in 40 CFR 70.2.

*Roller kiln* means any continuous kiln that uses rollers to convey individual ceramic pieces through the kiln, rather than using kiln cars such as those used in tunnel kilns.

*Tunnel kiln* means any continuous kiln (that is not a roller kiln) that is used to fire clay ceramics.

*Wet scrubber (WS)* means an air pollution control device that uses water, which may include caustic additives or other chemicals, as the sorbent. Wet scrubbers may use any of various design mechanisms to increase the contact between exhaust gases and the sorbent.

As stated in § 63.8555, you must meet each emission limit in the following table that applies to you:

**Tables to Subpart KKKKK of Part 63**

TABLE 1 TO SUBPART KKKKK OF PART 63.—EMISSION LIMITS

| For each . . . | You must meet the following emission limits . . . | Or you must comply with the following . . . |
|---|---|---|
| 1. New or reconstructed tunnel or roller kiln. | a. HF emissions must not exceed 0.014 kilograms per megagram (kg/Mg) (0.027 pounds per ton (lb/ton)) of fired product. | Reduce uncontrolled HF emissions by at least 95 percent. |
| | b. HCl emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product. | Reduce uncontrolled HCl emissions by at least 90 percent. |
| | c. PM emissions must not exceed 0.06 kg/Mg (0.12 lb/ton) of fired product. | Not applicable. |

As stated in § 63.8555, you must meet each operating limit in the following table that applies to you:

TABLE 2 TO SUBPART KKKKK OF PART 63.—OPERATING LIMITS

| For each . . . | You must . . . |
|---|---|
| 1. Kiln equipped with a dry lime injection fabric filter (DIFF) or dry lime scrubber/fabric filter (DLS/FF). | a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with your OM&M plan; operate and maintain the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; and<br>b. Maintain the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature, plus 14°C (25°F), established during the performance test; and<br>c. Maintain free-flowing lime in the feed hopper or silo and to the APCD at all times for continuous injection systems; maintain the feeder setting at or above the level established during the performance test for continuous injection systems. |
| 2. Kiln equipped with a DLS/FF ..... | Maintain the average water injection rate for each 3-hour block period at or above the level established during the performance test. |
| 3. Kiln equipped with a wet scrubber (WS) ..... | a. Maintain the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and<br>b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and<br>c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and |

TABLE 2 TO SUBPART KKKKK OF PART 63.—OPERATING LIMITS—Continued

| For each . . . | You must . . . |
|---|---|
| | d. If chemicals are added to the scrubber water, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the average scrubber chemical feed rate established during the performance test. |

As stated in § 63.8595, you must conduct each performance test in the following table that applies to you:

TABLE 3.—TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

| For each . . . | You must . . . | Using . . . | According to the following requirements . . . |
|---|---|---|---|
| 1. Kiln ..... | a. Select locations of sampling ports and the number of traverse points. | Method 1 or 1A of 40 CFR part 60, appendix A. | Sampling sites must be located at the outlet of the APCD and prior to any releases to the atmosphere for all affected sources. If you choose to meet the percent emission reduction requirements for HF or HCl, a sampling site must also be located at the APCD inlet. |
| | b. Determine velocities and volumetric flow rate. | Method 2 of 40 CFR part 60, appendix A. | You may use Method 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 2 of 40 CFR part 60, appendix A. |
| | c. Conduct gas molecular weight analysis. | Method 3 of 40 CFR part 60, appendix A. | You may use Method 3A or 3B of 40 CFR part 60, appendix A, as appropriate, as an alternative to using Method 3 of 40 CFR part 60, appendix A. |
| | d. Measure moisture content of the stack gas. | Method 4 of 40 CFR part 60, appendix A. | |
| | e. Measure HF and HCl emissions. | Method 26A of 40 CFR part 60, appendix A. | Conduct the test while operating at the maximum production level. You may use Method 26 of 40 CFR part 60, appendix A, as an alternative to using Method 26A of 40 CFR part 60, appendix A, when no acid PM (e.g., HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present. |
| | f. Measure PM emissions ..... | Method 5 of 40 CFR part 60, appendix A. | Conduct the test while operating at the maximum production level. |
| 2. Kiln that is complying with production-based emission limits. | Determine the production rate during each test run in order to determine compliance with production-based emission limits. | Production data collected during the performance tests (e.g., the number of ceramic pieces and weight per piece in the kiln during a test run divided by the amount of time to fire a piece). | You must measure and record the production rate, on a fired-product weight basis, of the affected kiln for each of the three test runs. |
| 3. Kiln equipped with a DIFF or DLS/FF. | a. Establish the operating limit for the average fabric filter inlet temperature. | Data from the temperature measurement device during the performance test. | You must continuously measure the temperature at the inlet to the fabric filter, determine and record the block average temperatures for the three test runs, and determine and record the 3-hour block average of the recorded temperature measurements for the three test runs. |
| | b. Establish the operating limit for the lime feeder setting. | Data from the lime feeder during the performance test. | For continuous lime injection systems, you must ensure that lime in the feed hopper or silo and to the APCD is free-flowing at all times during the performance test and record the feeder setting for the three test runs. If the feed rate setting varies during the three test runs, determine and record the average feed rate from the three test runs. |
| 4. Kiln equipped with a DLS/FF. | Establish the operating limit for the average water injection rate. | Data from the water injection rate measurement device during the performance test. | You must continuously measure the water injection rate. determine and the record the block average water injection rate values for the three test runs, and determine and record the 3-hour block average of the recorded water injection rate measurements for the three test runs. |

TABLE 3.—TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

| For each . . . | You must . . . | Using . . . | According to the following requirements . . . |
|---|---|---|---|
| 5. Kiln equipped with a WS. | a. Establish the operating limit for the average scrubber pressure drop. | Data from the pressure drop measurement device during the performance test. | You must continuously measure the scrubber pressure drop determine and record the block average pressure drop values for the three test runs, and determine and record the 3-hour block average of the recorded pressure drop measurements for the three test runs. |
| | b. Establish the operating limit for the average scrubber liquid pH. | Data from the pH measurement device during the performance test. | You must continuously measure the scrubber liquid pH, determine and record the block average pH values for the three test runs, and determine and record the 3-hour block average of the recorded pH measurements for the three test runs. |
| | c. Establish the operating limit for the average scrubber liquid flow rate. | Data from the flow rate measurement device during the performance test. | You must continuously measure the scrubber liquid flow rate, determine and record the block average flow rate values for the three test runs, and determine and record the 3-hour block average of the recorded flow rate measurements for the three test runs. |
| 6. Kiln equipped with a WS that includes chemical addition to the water. | Establish the operating limit for the average scrubber chemical feed rate. | Data from the chemical feed rate measurement device during the performance test. | You must continuously measure the scrubber chemical feed rate, determine and record the block average chemical feed rate values for the three test runs, and determine and record the 3-hour block average of the recorded chemical feed rate measurements for the three test runs. |

As stated in § 63.8605, you must demonstrate initial compliance with each emission limitation that applies to you according to the following table:

TABLE 4 TO SUBPART KKKKK OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

| For each . . . | For the following emission limitation . . . | You have demonstrated initial compliance if . . . |
|---|---|---|
| 1. New or reconstructed tunnel or roller kiln. | a. HF emissions must not exceed 0.014 kg/Mg (0.027 lb/ton) of fired product; or uncontrolled HF emissions must be reduced by at least 95 percent; and | i. The HF emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in § 63.8595(g)(1), do not exceed 0.014 kg/Mg (0.027 lb/ton); or uncontrolled HF emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test are reduced by at least 95 percent, according to the calculations in § 63.8595(g)(2); and<br>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HF emissions did not exceed 0.014 kg/Mg (0.027 lb/ton) or uncontrolled HF emissions were reduced by at least 95 percent. |
| | b. HCl emissions must not exceed 0.019 kg/Mg (0.037 lb/ton) of fired product; or uncontrolled HCl emissions must be reduced by at least 90 percent; and | i. The HCl emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in § 63.8595(g)(1), do not exceed 0.019 kg/Mg (0.037 lb/ton); or uncontrolled HCl emissions measured using Method 26A of 40 CFR part 60, appendix A, over the period of the initial performance test are reduced by at least 90 percent, according to the calculations in § 63.8595(g)(2); and<br>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which HCl emissions did not exceed 0.019 kg/Mg (0.037 lb/ton) or uncontrolled HCl emissions were reduced by at least 90 percent. |
| | c. PM emissions must not exceed 0.06 kg/Mg (0.12 lb/ton) of fired product.. | i. The PM emissions measured using Method 5 of 40 CFR part 60, appendix A, over the period of the initial performance test, according to the calculations in § 63.8595(g)(1), do not exceed 0.06 kg/Mg (0.12 lb/ton); and<br>ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the 3-hour performance test during which PM emissions did not exceed 0.06 kg/Mg (0.12 lb/ton). |

As stated in § 63.8620, you must demonstrate continuous compliance with each emission limit and operating limit that applies to you according to the following table:

TABLE 5 TO SUBPART KKKKK OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND OPERATING LIMITS

| For each . . . | For the following emission limits and operating limits . . . | You must demonstrate continuous compliance by . . . |
|---|---|---|
| 1. Kiln equipped with a DIFF or DLS/FF. | a. Each emission limit in Table 1 to this subpart and each operating limit in Item 1 of Table 2 to this subpart for kilns equipped with DIFF or DLS/FF. | i. Initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with your OM&M plan; operating and maintaining the fabric filter such that the alarm is not engaged for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm is counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time is counted as the actual amount of time take by you to initiate corrective action; and<br>ii. Collecting the fabric filter inlet temperature data according to §63.8600(a); reducing the fabric filter inlet temperature data to 3-hour block averages according to §63.8600(a); maintaining the average fabric filter inlet temperature for each 3-hour block period at or below the average temperature, plus 14°C (25°F), established during the performance test; and<br>iii. Verifying that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions in accordance with your OM&M plan; recording the feeder setting once each shift of operation to verify that the feeder setting is being maintained at or above the level established during the performance test. |
| 2. Kiln equipped with a DLS/FF ..... | Each emission limit in Table 1 to this subpart and each operating limit in Item 2 of Table 2 to this subpart for kilns equipped with DLS/FF. | Collecting the water injection rate data according to §63.8600(a); reducing the water injection rate data to 3-hour block averages according to §63.8600(a); maintaining the average water injection rate for each 3-hour block period at or above the average water injection rate established during the performance test. |
| 3. Kiln equipped with a WS ..... | a. Each emission limit in Table 1 to this subpart and each operating limit in Item 3 of Table 2 to this subpart for kilns equipped with WS. | i. Collecting the scrubber pressure drop data according to §63.8600(a); reducing the scrubber pressure drop data to 3-hour block averages according to §63.8600(a); maintaining the average scrubber pressure drop for each 3-hour block period at or above the average pressure drop established during the performance test; and<br>ii. Collecting the scrubber liquid pH data according to §63.8600(a); reducing the scrubber liquid pH data to 3-hour block averages according to §63.8600(a); maintaining the average scrubber liquid pH for each 3-hour block period at or above the average scrubber liquid pH established during the performance test; and<br>iii. Collecting the scrubber liquid flow rate data according to §63.8600(a); reducing the scrubber liquid flow rate data to 3-hour block averages according to §63.8600(a); maintaining the average scrubber liquid flow rate for each 3-hour block period at or above the average scrubber liquid flow rate established during the performance test; and<br>iv. If chemicals are added to the scrubber water, collecting the scrubber chemical feed rate data according to §63.8600(a); reducing the scrubber chemical feed rate data to 3-hour block averages according to §63.8600(a); maintaining the average scrubber chemical feed rate. |

As stated in §63.8635, you must submit each report that applies to you according to the following table:

TABLE 6 TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR REPORTS

| You must submit . . . | The report must contain . . . | You must submit the report . . . |
|---|---|---|
| 1. A compliance report ..... | a. If there are no deviations from any emission limitations (emission limit, operating limit) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period. If there were no periods during which the CMS was out-of-control as specified in your OM&M plan, a statement that there were no periods during which the CMS was out-of-control during the reporting period. | Semiannually according to the requirements in §63.8635(b). |

TABLE 6 TO SUBPART KKKKK OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

| You must submit . . . | The report must contain . . . | You must submit the report . . . |
|---|---|---|
| | b. If you have a deviation from any emission limitation (emission limit, operating limit) during the reporting period, the report must contain the information in § 63.8635(d) or (e) If there were periods during which the CMS was out-of-control, as specified in your OM&M plan, the report must contain the information in § 63.8635(e). | Semiannually according to the requirements in § 63.8635(b). |
| | c. If you had a startup, shutdown or malfunction during the reporting period and you took actions the consistent with your SSMP, compliance report must include the information in § 63.10(d)(5)(i). | Semiannually according to the requirements in § 63.8635(b). |
| 2. An immediate startup, shutdown, and malfunction report if you took actions during a startup, shutdown, or malfunction during the reporting period that are not consistent with your SSMP. | a. Actions taken for the event according to the requirements in § 63.10(d)(5)(ii). | By fax or telephone within 2 working days after starting actions inconsistent with the plan. |
| | b. The information in § 63.10(d)(5)(ii) | By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority. |

As stated in § 63.8655, you must comply with the General Provisions in §§ 63.1–63.15 that apply to you according to the following table:

TABLE 7 TO SUBPART KKKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK

| Citation | Subject | Brief description | Applies to subpart KKKKK |
|---|---|---|---|
| § 63.1 | Applicability | | Yes. |
| § 63.2 | Definitions | | Yes. |
| § 63.3 | Units and Abbreviations | | Yes. |
| § 63.4 | Prohibited Activities | Compliance date; circumvention, severability. | Yes. |
| § 63.5 | Construction/Reconstruction | Applicability; applications; approvals | Yes. |
| § 63.6(a) | Applicability | General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major. | Yes. |
| § 63.6(b)(1)–(4) | Compliance Dates for New and Reconstructed sources. | Standards apply at effective date; 3 years after effective date; Upon startup; 10 years after construction or reconstruction commences for section 112(f). | Yes. |
| § 63.6(b)(5) | Notification | | Yes. |
| § 63.6(b)(6) | [Reserved]. | | |
| § 63.6(b)(7) | Compliance Dates for New Reconstructed Area Sources That Become Major. | Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources. | Yes. |
| § 63.6(c)(1)–(2) | Compliance Dates for Existing Sources | Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension. | Yes. |
| § 63.6(c)(3)–(4) | [Reserved]. | | |
| § 63.6(c)(5) | Compliance Dates for Existing Area Sources That Become Major. | Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years). | Yes. |
| § 63.6(d) | [Reserved]. | | |
| § 63.6(e)(1)–(2) | Operation & Maintenance | Operate to minimize emissions at all times; correct malfunctions as soon as practicable; requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met. | Yes. |
| § 63.6(e)(3) | Startup, Shutdown, and Malfunction Plan (SSMP). | | Yes. |
| § 63.6(f)(1) | Compliance Except During SSM | You must comply with emission standards at all times except during SSM. | Yes. |

TABLE 7 TO SUBPART KKKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK—Continued

| Citation | Subject | Brief description | Applies to subpart KKKKK |
|---|---|---|---|
| § 63.6(f)(2)–(3) | Methods for Determining Compliance | Compliance based on performance test, operation and maintenance plans, records, inspection. | Yes. |
| § 63.6(g) | Alternative Standard | Procedures for getting an alternative standard. | Yes. |
| § 63.6(h) | Opacity/Visible Emission (VE) Standards | | No, not applicable. |
| § 63.6(i) | Compliance Extension | Procedures and criteria for Administrator to grant compliance extension. | Yes. |
| § 63.6(j) | Presidential Compliance Exemption | President may exempt source category | Yes. |
| § 63.7(a)(1)–(2) | Performance Test Dates | Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule. | Yes. |
| § 63.7(a)(3) | § 114 Authority | Administrator may require a performance test under CAA § 114 at any time. | Yes. |
| § 63.7(b)(1) | Notification of Performance Test | Must notify Administrator 60 days before the test. | Yes. |
| § 63.7(b)(2) | Notification of Rescheduling | Must notify Administrator 5 days before scheduled date of rescheduled date. | Yes. |
| § 63.7(c) | Quality Assurance (QA)/ Test Plan | Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing. | Yes. |
| § 63.7(d) | Testing Facilities | | Yes. |
| § 63.7(e)(1) | Conditions for Conducting Performance Tests. | Performance tests must be conducted under representative conditions. | No, § 63.8595 specifies requirements. |
| | | Cannot conduct performance tests during SSM; not a violation to exceed standard during SSM. | Yes. |
| § 63.7(e)(2)–(3) | Conditions for Conducting Performance Tests. | Must conduct according to subpart and EPA test methods unless Administrator approves alternative; must have at least three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used. | Yes. |
| § 63.7(f) | Alternative Test Method | | Yes. |
| § 63.7(g) | Performance Test Data Analysis | | Yes. |
| § 63.7(h) | Waiver of Test | | Yes. |
| § 63.8(a)(1) | Applicability of Monitoring Requirements | | Yes. |
| § 63.8(a)(2) | Performance Specifications | Performance Specifications in appendix B of 40 CFR part 60 apply. | Yes. |
| § 63.8(a)(3) | [Reserved]. | | |
| § 63.8(a)(4) | Monitoring with Flares | | No, not applicable. |
| § 63.8(b)(1) | Monitoring | Must conduct monitoring according to standard unless Administrator approves alternative. | Yes. |
| § 63.8(b)(2)–(3) | Multiple Effluents and Multiple Monitoring Systems. | Specific requirements for installing and reporting on monitoring systems. | Yes. |
| § 63.8(c)(1) | Monitoring System Operation and Maintenance. | Maintenance consistent with good air pollution control practices. | Yes. |
| § 63.8(c)(1)(i) | Routine and Predictable SSM | Reporting requirements for SSM when action is described in SSMP. | Yes. |
| § 63.8(c)(1)(ii) | SSM not in SSMP | Reporting requirements for SSM when action is not described in SSMP. | Yes. |
| § 63.8(c)(1)(iii) | Compliance with Operation and Maintenance Requirements. | How Administrator determines if source complying with operation and maintenance requirements. | Yes. |
| § 63.8(c)(2)–(3) | Monitoring System Installation | Must install to get representative emission and parameter measurements. | Yes. |
| § 63.8(c)(4) | Continuous Monitoring System (CMS) Requirements. | | No, § 63.8615 specifies requirements. |
| § 63.8(c)(5) | Continuous Opacity Monitoring System (COMS) Minimum Procedures. | | No, not applicable. |
| § 63.8(c)(6) | CMS Requirements | | No, § 63.8575 specifies requirements. |
| § 63.8(c)(7)–(8) | CMS Requirements | | No, § 63.8575 specifies requirements. |
| § 63.8(d) | CMS Quality Control | | No, § 63.8575 specifies requirements. |

TABLE 7 TO SUBPART KKKKK OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART KKKKK—Continued

| Citation | Subject | Brief description | Applies to subpart KKKKK |
|---|---|---|---|
| § 63.8(e) | CMS Performance Evaluation | | No, § 63.8575 specifies requirements. |
| § 63.8(f)(1)–(5) | Alternative Monitoring Method | Procedures for Administrator to approve alternative monitoring. | Yes. |
| § 63.8(f)(6) | Alternative to Relative Accuracy Test | | No, not applicable. |
| § 63.8(g) | Data Reduction | | No, not applicable. |
| § 63.9(a) | Notification Requirements | | Yes. |
| § 63.9(b) | Initial Notifications | | Yes. |
| § 63.9(c) | Request for Compliance Extension | | Yes. |
| § 63.9(d) | Notification of Special Compliance Requirements for New Source. | | Yes. |
| § 63.9(e) | Notification of Performance Test | Notify Administrator 60 days prior | Yes. |
| § 63.9(f) | Notification of VE/Opacity Test | | No, not applicable. |
| § 63.9(g)(1) | Additional Notifications When Using CMS | | Yes. |
| § 63.9(g)(2)–(3) | Additional Notifications When Using CMS | | No, not applicable. |
| § 63.9(h) | Notification of Compliance Status | | Yes. |
| § 63.9(i) | Adjustment of Submittal Deadlines | | Yes. |
| § 63.9(j) | Change in Previous Information | | Yes. |
| § 63.10(a) | Recordkeeping/Reporting | | Yes. |
| § 63.10(b)(1) | General Recordkeeping Requirements | | Yes. |
| § 63.10(b)(2)(i)–(v) | Records Related to Startup, Shutdown, and Malfunction. | | Yes. |
| § 63.10(b)(2)(vi)–(xii) and (xiv). | CMS Records | | Yes. |
| § 63.10(b)(2)(xiii) | Records | Records when using alternative to relative accuracy test. | No, not applicable. |
| § 63.10(b)(3) | Records | Applicability Determinations | Yes. |
| § 63.10(c) (1)–(15) | Records | | No, §§ 63.8575 and 63.8640 specify requirements. |
| § 63.10(d)(1) and (2) | General Reporting Requirements | Requirements for reporting | Yes. |
| § 63.10(d)(3) | Reporting Opacity or VE Observations | | No, not applicable. |
| § 63.10(d)(4) | Progress Reports | Must submit progress reports on schedule if under compliance extension. | Yes. |
| § 63.10(d)(5) | Startup, Shutdown, and Malfunction Reports | Contents and submission | Yes. |
| § 63.10(e)(1)–(3) | Additional CMS Reports | | No, §§ 63.8575 and 63.8635 specify requirements. |
| § 63.10(e)(4) | Reporting COMS data | | No, not applicable. |
| § 63.10(f) | Waiver for Recordkeeping/Reporting | | Yes. |
| § 63.11 | Flares | | No, not applicable. |
| § 63.12 | Delegation | | Yes. |
| § 63.13 | Addresses | | Yes. |
| § 63.14 | Incorporation by Reference | | Yes. |
| § 63.15 | Availability of Information | | Yes. |

[FR Doc. 02–15869 Filed 7–19–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
July 22, 2002

## Part III

# Department of State

**Office of Protocol**

**Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2001; Notice**

**DEPARTMENT OF STATE**

**Office of Protocol**

**[Public Notice 4058]**

## Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 2001

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 2001 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the Federal Register is required by Section 7342(f) of Title 5, United States Code, as added by Section 515(a)(1) of the Foreign Relations Authorizations Act, Fiscal Year 1978 (Public Law 95–105, August 17, 1977, 91 Stat. 865).

Dated: April 25, 2002.

**Grant S. Green, Jr.,**

*Under Secretary for Management, Department of State.*

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| President | Inuit sculpture of walrus in green soapstone with ivory tusks, created by J.B. Kolola (12″ x 7″ x 5″). Recd—February 5, 2001. Est. Value—$700. Archives Foreign. | The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Red Oriental wool rug (approximately 39″ x 63″) with an additional 4″ of fringe on each side. Recd—February 14, 2001. Est. Value—$400. Archives Foreign.<br>Book: ''Nazarabayev—My Life, My Times, and the Future,'' an autobiography. Recd—February 14, 2001. est. Value—$30. Archives Foreign. | His Excellency Kanat B. Saudabayev, Ambassador of the Republic of Kazakhstan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | (1) Two book set (English and Spanish): ''Guanajuato: Places and Pathways'' and ''Guanajuato: Sitios y Recorridos,'' by Consuelo Tovar. (2) Handmade black leather cowboy boots with eagles on each side; made by the Liberty Boot Company. Recd—February 15, 2001. Est. Value—$1900. Archives Foreign. | The Honorable Juan Carlos Romero Hicks, Governor of the State of Guanajuato. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Handmade black and maroon ostrich skin cowboy boots made by the Montana Boot Company. Recd—February 15, 2001. Est. Value—$1500. Archives Foreign.<br>Black leather belt with a sterling silver belt buckle shaped to form ''BUSH''. Recd—February 15, 2001. Est. Value—$400. Archives Foreign.<br>Pitiado belt decorated with cactus thread. Recd—February 15, 2001. Est. Value—$400. Archives Foreign. | His Excellency Vicente Fox Quesada, President of the United Mexican States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Black felt cowboy hat by the Arlop Hat Company. Recd—February 15, 2001. Est. Value—$250. Archives Foreign. | The Honorable Eduardo Ezequiel Arroyo Roldan, Mayor of San Francisco Del Rincon, Guanajuato. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| | Black felt sombrero with 10k gold thread trim stitched ''San Francisco del Rincon, Gto 2001 Fox Bush San Cristobal'' around the rim; made by the Salazar Yepez Hat company. Recd—February 15, 2001. Est. Value—$1800. Archives Foreign. | | |
| | ''Concord'' gym bag with five baseball hats with ''Concord'' symbol; three pairs of men's running shoes; two short-sleeved ''Concord'' shirts, white with black trim; two short-sleeved ''Concord'' shirts, black and white trim. Recd—February 15, 2001. Est. Value—$552. Archives Foreign. | | |
| President | (1) Key to the city of Leon in a black case with a plaque ''Llave de la Ciudad de Leon de los Aldama Entregada por su Govierno al Presidente de los Estados Unidos de Norte America George W. Bush Leon de los Aldama, Guanajuato, Mexico a 16 de Febrero del ano 2001.'' Small Mexican flag lapel pin included. (2) 8″ metal replica of ''Arco Triunfal'' on a wooden base. (3) Hardcover book: ''Leon: Trayectoria y Destino'', by Mariano Gonzalez Leal. (4) Handmade black leather boots with blue and white stitching from the San Diego Boot Company. Recd—February 15, 2001. Est. Value—$1620. Archives Foreign. | The Honorable Luis Ernesto Ayala Torres, Mayor of the City of Leon. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Painting: De la Serie ''Paisajes de Cafetal'' by Edmundo Otoniel, 11″ x 14″ landscape scene triple matted and framed in a gold-painted wooden frame (26″ x 29″. Recd—March 2, 2001. Est. Value—$1200. Archives Foreign. | His Excellency Francisco Guillermo Flores Perez, President of the Republic of El Salvador. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Model of a turtle ship (keo bug seon). 5.5″ x 5.5″ x 5.5″, executed in white painted aluminum; contained in a glass case on a rosewood base with brass plaque engraved ''Presented to his Excellency George Walker Bush, the President of the United States of America by Kim Dae-jung, the President of the Republic of Korea March 7, 2001''. Recd—March 7, 2001. Est. Value—$400. Archives Foreign. | His Excellency Kim Dae-jung, President of the Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| | Book: ''Three Stage' Approach to Korean Reunification,'' by President Kim Dae-jung. Recd—March 7, 2001. Est. Value—$40. Archives Foreign. | | |
| President | Mirror: 36″ x 50″ in an elaborate 5″ wooden inlay frame; handmade in Syria. Recd—March 13, 2001. Est. Value—$600. Archives Foreign. | His Excellency Rostom Al-Zoubi, Ambassador of the Syrian Arab Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Large (12″ diameter) Dublin Crystal bowl, engraved on side ''Presented to George W. Bush, President of The United States of America on the occasion of St. Patrick's Day 2001 by the Taoiseach, Bertie Ahern, T.D., on behalf of the people of Ireland.'' Gift also included 5 pint-size bags of shamrocks. Recd—March 16, 2001. Est. Value—$295. Archives Foreign. | His Excellency Bertie Ahern, Prime Minister of Ireland. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Portrait: Laser picture of President Bush on stretch nylon fabric 16″ x 12″), double matted in wooden frame (23¼″ x 18¼″). Recd—March 19, 2001. Est. Value—$375. Archives Foreign. | His Excellency Yoshiro Mori, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| | Vase: Kutani ware, round 6½″ x 20″ in dark blue shading to green color. Recd—March 19, 2001. Est. Value—$350. Archives. | | |
| President | Etching (20″ x 15″): ''Draught of the City of Jerusalem'' with a plaque engraved: ''Presented to The Honorable George W. Bush, President The United States of America, In Friendship, March 2001 Ariel Sharon State of Israel Prime Minister.'' Recd—March 20, 2001. Est. Value—$275. Archives Foreign. | His Excellency Ariel Sharon, Prime Minister of Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Boots: navy blue ostrich skin stitched with ''GWB'', ''2001'', the American and Mexican flags, and a symbolic Mexican design. Recd—March 22, 2001. Est. Value—$1800. Archives Foreign. | His Excellency Vicente Fox Quesada, President of the United Mexican States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Coin: ''Pontificate of John Paul II'' gold coin, issued 12 Sept 2000. Recd—March 26, 2001. Est. Value—$405. Archives Foreign. | His Eminence Edmund Cardinal Szoka, President, Pontifical Commission for Vatican City State. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| | Coin: ''Pontificate of Paul Paul II'' coin, issued 12 Sept 2000. Recd—March 26, 2001. Est. Value—$209. Archives Foreign. | | |
| President | Eschenbach binoculars and canvas carrying case. Recd—March 29, 2001. Est. Value—$267. Archives Foreign. | His Excellency Gerhard Schroeder, Chancellor of the Federal Republic of Germany. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| | Hardcover book: ''Berlin 360,'' by Jaron Verlag. Book has panoramic photographs of various scenes in Berlin with captions in German. Recd—March 29, 2001. Est. Value—$75. Archives Foreign. | | |
| President | Rug: Mamluk design, all silk (approximately 4′ x 6′ machine spun Egyptian rug. Recd—April 2, 2001. Est. Value—$1500. Archives Foreign. | His Excellency Mohamed Hosny Mubarak, President of the Arab Republic of Egypt. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Vase; metal in the shape of the Aries symbol (a ram's head). Recd—April 9, 2001. Est. Value—$400. Archives Foreign. | His Excellency Robert Kocharian, President of the Republic of Armenia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Crystal vase (10″ x 4½″): handmade Swedish frosted glass with crown engraved on top and a landscape design underneath; wood base with brass plaque and a wood display case (14″ x 8¾″ x 8½″) also included. Recd—April 10, 2001. Est. Value—$600. Archives Foreign. | His Majesty King Abdullah II bin Al Hussein of the Hashemite, Kingdom of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | ''Coordillerana'' saddle, stirrup, stirrup's belt, blue poncho, poncho, and silver bridle. Recd—April 19, 2001. Est. Value—$438. Archives Foreign. | His Excellency The President of the Argentine Nation and Mrs. de De la Rua. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| | Silver ''GB'' belt buckle and leather belt. Recd—April 19, 2001. Est. Value—$200. Archives Foreign. | | |
| President | Artwork (18″ x 21″): four pictures of different Quebec scenes by Antoine, Dumas; all numbered, 30 of 80, and signed by artist. Recd—April 20, 2001. Est. Value—$575. Archives Foreign. | The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Wooden box with carving of Chateau Frontenac on front containing 4 bottles of Inniskillin wine ('97 Oak aged and '98 Vidal). Recd—April 20, 2001. Est. Value—$336. Handled pursuant to Secret Service policy. | The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Hardback book: ''Sepultado en el olvido: Atlas Historiografico,″ by Alejandro, Bolanos Geyer. Recd—April 21, 2001. Est. Value—$300. Archives Foreign. | His Excellency, The President of the Republic of Nicaragua and Exelentisima Maria Dolores Aleman. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Framed paintings (21″ x 21½″): (1) town scene, (2) village by the beach. Recd—April 25, 2001. Est. Value—$700. Archives Foriegn. | His Excellency, Rafiq al-Hariri, Prime Minister of the Republic of Lebanon. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Color photograph (approximately 9″ x 7″) inscribed to President in a silver and leather frame. Recd—May 7, 2001. Est. Value—$500. Archives Foreign. | His Highness Sheikh Sulman bin Hamad bin Isa Al–Khalifa, Crown Prince of the State of Bahrain, and Head of the Bahrain Defense Force. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| | Curved gold saber and sheath, approximately 39″ long. Recd—May 7, 2001. Est. Value—$10000. Archives Foreign. | | |
| President | Bottle (750ml) of Sljiva liquor. Recd—May 9, 2001. Est. Value—$16. Handled pursuant to Secretary Service policy. Icon: 14″ × 10″ painted wood icon depicting St. George on a horse slaying a monster. Recd—May 9, 2001. Est. Value—$250. Archives Foreign. | His Excellency Vojislav Kostunica, President of the Federal Republic of Yugoslavia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | 14″ black sculpture of a panther with display stand; held in a large green leather box. Recd—May 11, 2001. Est. Value—$850. Archives Foreign. | His Excellency, Olusegun Obasanjo, President of the Federal Repubilic of Nigeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Two signed, limited edition engravings, approximately 6½″ x 8″ Recd—May 23, 2001. Est. Value—$400. Archives Foreign. | His Excellency, Vicente Fox Quesada, President of the United Mexican States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Hardcover book: ''Scrolls from the Dead Sea.″ Hardcover book: ''The Golden Book of Psalms,″ bound in buffalo leather, printed in Hebrew and English, and held in a leather and wood box. Recd—May 31, 2001. Est. Value—$535. Archives Foreign. 38″ x 9″ framed reproduction of a Dead Sea Scroll; held in a blue velvet box. Recd—May 31, 2001. Est. Value—$300. Archives Foreign. | His Excellency Moshe Katzav, President of Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Waterman blue fountain pen with NATO logo on tip. Recd—June 13, 2001. Est. Value—$275. Archives Foreign. | The Right Honorable Lord Robertson of Port Ellen, P.C., Screatary General of the North Atlantic Treaty Organization. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Four crystal wine glasses. Recd—June 13, 2001. Est. Value—$800. Archives Foreign. | His Excellency Guy Verhofstadt, Prime Minister of Belgium. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Crystal globe (10″ diameter) with Slovenia marked in gold. Globe rotates and rests on marble base (9″d) with plaque engraved ''Republika Slovenija 16.6.2001.″ Recd—June 16, 2001. Est. Value—$250. Archives Foreign. Hardcover book: ''Slovenia: The First Ten Years,″ Recd—June 16, 2001. Est. Value—$80. Archives Foreign. | His Excellency Milan Kucan, President of the Republic of Slovenia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Silver relief of the Kremlin (2″ x 5″) and 5 silver coins; held in blue presentation box. Recd—June 16, 2001. Est. Value—$350. Archives Foreign. | His Excellency, Vladimir Putin, President of the Russian Federation. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Cloth (11″ x 6′8″): green, gold, black, purple and red hand woven ''Kente'' cloth. Recd—June 29, 2001. Est. Value—$650. Archives Foreign. | His Excellency John Kufuor, President of the Republic of Ghana. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| President | Fishing rod: 6″ Daiwa ''Grand Wave-X Off-shore'' rod; specialized jigging model 63 HRJ–S. Recd—June 30, 2001. Est. Value—$399. Archives Foreign.<br>Sony P50 digital camera. Recd—June 30, 2001. Est. Value—$400. Archives Foreign. | His Excellency Junichiro Koizumi, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Saddle: black with gold and silver embroidery, red leather trim, black fringe with silver sequins, and intricately engraved metal strirrups; held in a glass case. Recd—July 6, 2001. Est. Value—$500. Archives Foreign. | His Majesty Mohamed VI, King of Morocco. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Sword: 29″ silver handle and sheath with motif of flowers and rope, and coral stones. Recd—July 12, 2001. Est. Value—$1000. Archives Foreign.<br>Saddle (39″ x 41″) with 15″ seat and wool blanket lining: green leather with gold and silver rope applique with matching neck piece (50″ x 3″) and head piece (33″ x 15″). Wood stand for resting the saddle (31″ x 22″ x 15″). Recd—July 12, 2001. Est. Value—$1400. Archives Foreign.<br>Dates (10 boxes): ''Dattes Deglet Nour d'Algerie, Branchettes.'' Recd—July 12, 2001. Est. Value—$220. Handled pursuant to Secret Service policy.<br>Wine (36 bottles): Domaine de Sebra (12); Medea (12); Cuvee du President (12). Recd—July 12, 2001. Est. Value—$480. Handled pursuant to Secret Service policy. | His Excellency Abdelkaziz Bouteflika, President of the People's Democratic Republic of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Silver frame (8½″ x 12″): with the Royal crest engraved on top, and matted and signed photograph of Prince Philip. Recd—July 19, 2001. Est. Value—$350. Archives Foreign. | His Royal Highness The Prince Philip, Duke of Edinburgh. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Art prints (4): copper plates (30″ x 22½″) hand printed on Fabriano Tiepolo paper depicting four Greco-Roman theaters; all signed and numbered. Recd—July 20, 2001. Est. Value—$800. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Porcelain bowl: 15½″ white and gold crater-shaped bowl by Richard Ginori; crafted in the style of Carlo Leopoldo Ginori Lisci; with scalloped edges and four mermaid figures atop a base featuring two horses. Recd—July 20, 2001. Est. Value—$1200. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| President | Toiletries: Aqua di Parma cologne (6 oz.); soap (100 g); facial cream (3.3 oz.); and cologne deodorant (5 oz.). Recd—July 20, 2001. Est. Value—$263. Handled pursuant to Secret Service policy. Yellow leather Aqua di Parma toiletries case. Recd—July 20, 2001. Est. Value—$100. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Watch: Stradivari 1715 wristwatch with black leather band and silver casing engraved ''George W. Bush'' on side. Recd—July 20, 2001. Est. Value—$500. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Leatherbound hardcover book (first edition): ''Storia Della Scienza, Volume I'' in a brown leather sleeve; accompanied by an engraved book plaque. Recd—July 20, 2001. Est. Value—$350. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Watch: Franck Muller Chrometro wristwatch with gold casing and brown leather band, Recd—July 27, 2001. Est. Value—$10900. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Lap desk: portable black leather Pineider writing desk (17½″ x 17¼″ x 15½″) with personalized stationery, fountain pens and nibs, and inkwell. Recd—July 27, 2001. Est. Value—$1650. Archives Foreign. | His Excellency Sivlio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Ties (3): ''Battistoni'' silk twill (navy blue). Recd—July 30, 2001. Est. Value—$390. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Photo album: leather imprinted with ''Presidenza della Republica Italiana, George W. Bush, Presidente degli Stati Uniti D'America, Genova—Roma, 20–23 Luglio 2001,'' containing photos from the Presidential visit. Recd—July 30, 2001. Est. Value—$200. Archives Foreign. | His Excellency Carlo Azeglio Ciampi, President of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Wooden carving: 40″ female figure carrying child on her back and a water urn on her head; carved from light-colored ebony with a plaque attached to the base: ''To The Honorable George W. Bush President of the United States From, Ambassador Serge Mombouli Republic of Congo, Credentials Presented 7–31–01.'' Recd—July 30, 2001. Est. Value—$1600. | His Excellency Serge Mombouli, Ambassador of the Republic of Congo. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| President | Briefcase: made of black real carbon fiber by ''Tradition and Technology'' (4″ x 14″ x 17″). Recd—July 31, 2001. Est Value—$800. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Jacket: Barbour Thornproof, Classic Beaufort with zip-in vest and snap-on hood. Recd—July 31, 2001. Est. Value—$354. Archives Foreign. | The Right Honorable Tony Blair, M.P., Prime Minister. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Framed document: 27″ x 32″ framed and matted reproduction of the ''Declaration of Quebec City'' from the Summit of the Americas, April 22, 2001; signed by attendees. Recd—August 20, 2001. Est. Value—$180. Archives Foreign.<br>CD and videocassette: ''Amerythmes: Sommet des Ameriques, Quebec, Canada 2001.'' Recd—August 20, 2001. Est. Value—$30. Archives Foreign.<br>Album: 9″ x 10″ burgundy leather photo album embossed with gold crest, containing photographs of the Presidential visit to Quebec in April 2001. Recd—August 20, 2001. Est. Value—$201. Archives Foreign. | The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Shirt: long-sleeve wool shirt with blue and green stripes. Recd—September 10, 2001. Est. Value—$150. Archives Foreign.<br>Boots: custom-made boots of Australian crocodile, kangaroo, and emu hide. Recd—September 10, 2001. Est. Value—$496. Archives Foreign.<br>Bowl: wooden bowl (16″ x 10″) made of Australian red cedar, with hinged lid and flower design on lid; held in satin-lined polished wood case. Recd—September 10, 2002. Est. Value—$404. Archives Foreign. | The Honorable John Howard, Prime Minister of Australia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Wreath of flowers. Recd—September 17, 2001. Est. Value—$300. Handled pursuant to Secret Service policy. | His Excellency, Teodoro Biyogo Nsue, Ambassador of the Republic of Equatorial Guinea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Watch: Bernard-Richards quartz watch with Roman and Arabic dials and a leather band; engraved on back ''Presidence de la Republique francaise.'' Recd—September 19, 2001. Est Value—$350. Archives Foreign. | His Excellency Jacques Chirac, President of the French Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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|---|---|---|---|
| | Wine: 6 bottles of 1990 Chateau La Lagune Haut-Medoc win. Recd—Septmeber 19, 2001. Est. Value—$372. Handled pursuant to Secret Service policy. | | |
| President | Wood carving: 31″ elaborately carved ebony in the figure of a male and female head. Recd—September 26, 2001. Est. Value—$225. Archives Foreign. | Her Excellency Soekarnopoutri Megawati, President of the Republic of Indonesia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Framed original cartoon by Washington Times cartoonist Bill Garner; two-panel drawing of President Bush at joint session of Congress in September 2001. Recd—October 1, 2001. Est. Value—$600. Archives Foreign. | His Royal Highness Prince Bandar bin Sultan bin Abdul Aziz, Ambassador of the Kingdom of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Vase (14″): turquoise frosted glass bowl (15″ diameter) on a gold and silver stand surrounded by five gnus. Recd—October 4, 2001. Est. Value—$10000. Archives Foreign. | His Highness Sheikh Hamad bin Khalifa Al Thani, Amir of the State of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| | CD: ''Qatar: The Modern State.'' Recd—October 4, 2001. Est. Value—$15. Archives Foreign. | | |
| President | Painting: 23″ round enamel painting on copper of St. George on a horse slaying the dragon, with ''Good Defeats Evil'' above it; held on a 35″ × 35″ wood frame. Recd—October 5, 2001. Est. Value—$800. Archives Foreign. | His Excellency Eduard Shevardnadze, President of Georgia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Parchment commendation of George W. Bush from ''Republica de Colombia Congreso de Colombia Sesion Plenaria''; received in a leather folder embossed with crest and ''Senado de la Republica''. Recd—October 12, 2001. Est. Value—$400. Archives Foreign. | The Honorable Carlos Garcia Orjuela, President of the Senate of the Republic of Colombia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Watch: silver Piaget watch with rectangular face. Recd—October 16, 2001. Est. Value—$5900. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Bow: 6′ lacquered bamboo bow bound by rattan; made in the same manner as those of the shoguns. Recd—October 20, 2001. Est. Value—$650. Archives Foreign. | His Excellency Junichiro Koizumi, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| | Wooden stand and four arrows; stand designed to hold large bamboo bow. Recd—October 20, 2001. Est. Value—$60. Archives Foreign. | | |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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|---|---|---|---|
| | Arrow: antique fork-shaped arrow in a wooden box with calligraphy by the Prime Minister: ''The arrow to defeat the evil and bring peace on earth.'' Recd—October 20, 2001. Est. Value—$2400. Archives Foreign. | | |
| | Photograph: 4″ x 6″ color photo of a man in traditional shogun costume on horseback with large bow and arrow; held in a tinted lucite frame. Recd—October 20, 2001. Est. Value—$30. Archives Foreign. | | |
| President | Hardcover book series (10 volumes): ''Kasaysayan: The Story of the Filipino People,'' published by Reader's Digest. Recd—October 21, 2001. Est. Value—$350. Archives Foreign. | Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines. | Non-acceptance would cause embarrasement to donor and U.S. Government. |
| President | Box: 5¼″ x 3¾″ x 2″ wood-lined silver box with glass insert in lid displaying piece of Peruvian fabric. Recd—October 24, 2001. Est. Value—$200. Archives Foreign. | His Excellency Alejandro Toledo Manrique, President of the Republic of Peru. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| | Hardcover coffee table book: ''Calendar of Peru: Fiesta Times.'' Recd—October 24, 2001. Est. Value—$75. Archives Foreign. | | |
| President | Rice bowl: ornate silver bowl with lid and gold details, made in traditional Malay silver crafting method. Recd—October 24, 2001. Est. Value—$750. Archives Foreign. | His Excellency YAB Dato Seri Dr. Mahathir bin Mohamad, Prime Minister of Malaysia. | Non-acceptance would cause embarrasement to donor and U.S. Government. |
| President | Box: 8¼″ x 6½″ wood box carved with the APEC CEO Summit logo; lined in yellow silk and containing a glass snuff bottle painted with an image of the President, with a wood display stand. Recd—October 24, 2001. Est. Value—$1000. Archives Foreign. | Mr. Yu Ziaozong, Chairman, China Council for the Promotion of International Trade. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Vase: ceramic vase painted with Chinese landscape; held in a silk box with rosewood stand. Recd—October 24, 2001. Est. Value—$150. Archives Foreign. | His Excellency Jiang Zemin, President of the People's Republic of China. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| | Tunic: blue and gold, traditional Chinese silk tunic lined in ivory silk and held in a personalized red silk garment bag. Recd—October 24, 2001. Est. Value—$350. Archives Foreign. | | |
| President | Vessel: 12″ silver and gold lidded pitcher with elaborate detailing. Recd—October 25, 2001. Est. Value—$850. Archives Foreign. | His Highness Sheikh Sulman bin Hamad bin Isa Al-Khalifa, Crown Prince of the State of Bahrain and Head of the Bahrain Defense Force. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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| President | Dates: two boxes of Algerian dates. Recd—November 6, 2001. Est. Value—$130. Handled pursuant to Secret Service policy.<br>Wine (12 bottles): 1998 Domanine Sebra, 1998 Domaine Mamounia, and 1998 Domaine Khadra (4 bottles of each). Recd—November 6, 2001. Est. Value—$180. Handled pursuant to Secret Service policy.<br>Rug: 6′ x 9′ multi-colored area rug made of native Algerian wool. Recd—November 6, 2001. Est. Value—$2800. Archives Foreign..<br>Mosaic: 51″ x 47″ ceramic tile mosaic in blue and green floral pattern, in a wooden frame. Recd—November 6, 2001. Est. Value—$1800. Archives Foreign. | His Excellency Abdelaziz Bouteflika, President of the People's Democratic Republic of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Wine: 6 bottles of 1990 Chateau Talbot Saint-Julien. Recd—November 7, 2001. Est. Value—$450. Handled pursuant to Secret Service policy. | His Excellency Jacques Chirac, President of the French Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Sterling silver tray (11″ x 11″) and bowl (8″) with bulls around the edges. Recd—November 9, 2001. Est. Value—$1000. Archives Foreign. | His Excellency Atal Bihari Vajpayee, Prime Minister of the Republic of India. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Facsimile of letter recognizing the United States as a nation; held in a leather presentation box embossed with Croation crest. Recd—November 10, 2001. Est. Value—$300. Archives Foreign. | His Excellency Stjephan Mesic, President of the Republic of Croatia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Samovar: 40″ electric stainless steel tea urn with platter. Recd—November 13, 2001. Est. Value—$750. Archives Foreign. | His Excellency Vladimir Putin, President of the Russian Federation. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Commemorative coin: gold coin with ''Commemoraction Cenenario Natalicio de Rubon Dario'' printed inside lid of blue box with blue velvet interior. Est. Value—$300. Archives Foreign. | His Excellency Enrique Bolanos, President-elect of the Republic of Nicaragua. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | CDs (2): commemorating September 11 attacks: ''Long Live America'' and ''My Heart's Song: For NYC and the World;'' lyrics of ''Long Live America!'' in silver painted frame (8″ x 10″). Recd—November 21, 2001. Est. Value—$45. Archives Foreign.<br>Hardcover art book: ''Kiukok: Deconstructing Despair,'' by Alfredo Roces. Recd—November 21, 2001. Est. Value—$75. Archives Foreign. | Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Mr. Jose Miguel Arroyo. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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| | Cuff links: yellow mother of pearl cuff links set in 18K gold. Recd—November 21, 2001. Est. Value—$300. Archives Foreign.<br>Painting: 19″ x 25″ painting ''Rooster'' by Filippino artist Ang Kiukok in a goldtone frame. Recd—November 21, 2001. Est. Value—$450. Archives Foreign. | | |
| President | Tea: 72 packets of La Virginia Argentine tea. Recd—November 27, 2001. Est. Value—$72. Handled pursuant to Secret Service policy.<br>Box: 11½″ x 7″ x 3½″ sterling silver box with wood interior and crest of Argentina on lid. Recd—November 27, 2001. Est. Value—$450. Archives Foreign. | His Excellency The president of the Argentine Nation and Mrs. de De la Rua. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Saddle: Western-style brown leather saddle with silver accents. Recd—November 27, 2001. Est. Value—$500. Archives Foreign.<br>Hat: brown leather hat with drawstring. Redc—November 27, 2001. Est. Value—$75. Archives Foreign. | His Excellency Pervez Musharraf, President of the Islamic Republic of Pakistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork (45.5″ x 35″): oil painting of five African tribal dancers in gold-toned frame. Recd—November 27, 2001. Est. Value—$500. Archives Foreign.<br>Artwork (31″ x 27″): oil painting of village scene with purple flowering tree; held in wooden frame painted white with red accents. Recd—November 27, 2001. Est. Value—$325. Archives Foreign. | His Excellency Didier Ratsiraka, President of the Republic of Madagascar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Artwork (9″ x 12″): blue cross with black overlay, and yellow and red background, by Rafael Canogar, numbered 17/25. Recd—November 28, 2001. Est. Value—$500. Archives Foreign. | His Excellency Jose Maria Aznar, President of the Government of Spain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Sword: 29″ silver saber with curved blade and scabard with elaborate detailing and amber stones. Recd—November 28, 2001. Est. Value—$1500. Archives Foreign.<br>Fabric (4 pieces): 98″ x 49″ blue and orange striped material; 116″ x 46″): black and orange striped material (2); and 100″ x 44″ blue and yellow striped material. Recd—November 28, 2001. Est. Value—$300. Archives Foreign. | His Excellency Ali Abdullah Saleh, President of the Republic of Yemen. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

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| President | Framed photograph: 27″ x 24″ doubled matted color photo of then-Governor Bush at the Western Wall in Jerusalem, Israel. Recd—December 2, 2001. Est. Value—$300. Archives Foreign. | His Excellency Ariel Sharon, Prime Minister of Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Framed message: 19″ x 24″ message proclaiming the planting of 5000 trees in a park in Jerusalem to honor the victims of the September 11 attacks; in a painted wood frame with cream matting. Small plaque on frame engraved: ''With appreciation for your leadership, courage, and determination in the face of evil.'' Recd—December 3, 2001. Est. Value—$69. Archives Foreign.<br>Circular engraved sterling and gold representation of Jerusalem; small plaque on stand reads: ''Presented to The Honorable George W. Bush, President of the United States of America, In Friendship December 2001, Ariel Sharon, Prime Minister of the State of Israel.'' Recd—December 3, 2001. Est. Value—$500. Archives Foreign. | His Excellency Ariel Sharon, Prime Minister of Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Staff: 48″ wooden rod bound in silver, inset with multi-colored glass stones; 6 hanging charms near the top. Recd—December 6, 2001. Est. Value—$300. Archives Foreign. | His Excellency Jorge Fernando Quiroga Ramirez, President of the Republic of Bolivia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Hardcover coffee table book: ''Casas de los Cabos.'' Recd—December 7, 2001. Est. Value—$50. Archives Foreign.<br>Decorative silver bowl (4″ x 4″d) with a small bird on the lip. Recd—December 7, 2001. Est. Value—$250. Archives Foreign. | His Excellency Vicente Fox Quesada, President of the United Mexican States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Lamp: 27″ lamp with a jade base carved in the shape of an elephant, with a 14″ green silk shade. Recd—December 14, 2001. Est. Value—$800. Archives Foreign. | His Excellency Sakthip Krairiksh, Ambassador of the Kingdom of Thailand. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Books: boxed set of nine volumes on the ''Kings of the Royal House of Chakri.'' Recd—December 14, 2001. Est. Value—$350. Archives Foreign.<br>Stationery: 2 sets of paper and envelopes, with a gold tone letter opener; held in a polished burlwood box with the seal of the Royal Thai Government on the lid. Recd—December 14, 2001. Est. Value—$60. Archives Foreign. | His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

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[Report of Tangible Gifts]

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|---|---|---|---|
| | Travel desk: 13½″ x 17½″ black leather-topped lap desk with polished burlwood trim. Recd—December 14, 2001. Est. Value—$250. Archives Foreign. | | |
| President | Colored photographs (19): pictures of the Presidential visit to China; off-white matting with gold edges (9.5″ x 13″). Recd—December 19, 2001. Est. Value—$333. Archives Foreign. | His Excellency Tang Jiaxuan, Minister of Foreign Affairs of the People's Republic of China. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Decorative silver stand (6½″) with a marble base; indigenous Kazakhstan animals adorn the stand; held in a green leather presentation case. Recd—December 21, 2001. Est. Value—$5697. Archives Foreign.<br>Silver medallion (2″ diameter): engraved with ''President of Republic of Kazakhstan'' with outline and signature of President Nazarbayev. Recd—December 21, 2001. Est. Value—$40. Archives Foreign. | His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Saddle: black with ornate trimming. Recd—December 21, 2001. Est. Value—$7500. Archives Foreign. | His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Hardcover leather books (2 copies): ''A Diary Between Friends,'' by Alliance Atlantis Communications, Inc. (English and French versions), in sleeves. Recd—December 27, 2001. Est. Value—$500. Archives Foreign. | The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Governemnt. |
| President | Branched dates (approximately 30 pounds). Recd—December 31, 2001. Est. Value—$180. Handled pursuant to Secret Service policy.<br>Purple leather chest (16″ x 18″ x 24″): Bombay vault style with mirror-lined lid; one false drawer, two half drawers, and one full drawer, all leather covered and lined. Recd—December 31, 2001. Est. Value—$700. Archives Foreign.<br>Olive oil (8 liters). Recd—December 31, 2001. Est. Value—$28. Handled pursuant to Secret Service policy.<br>Bottles of wine (6): ''Les Vignes de Tanit (2 Rose, 2 Blanc, 2 Rouge),'' made in Tunisia. Recd—December 31, 2001. Est. Value—$48. Handled pursuant to Secret Service policy. | His Excellency Zine El-Abidine Ben Ali, President of the Republic of Tunisia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

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[Report of Tangible Gifts]

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| President | Chinese classical novels (4 chests, 38 volumes total): ''Dream of Red Mansions,'' ''The Romance of Three Kingdoms,'' ''Outlaws of the Marsh,'' and ''Journey to the West,'' printed on fine kozo (rice) style paper with silk covering; made into calligraphic version by Shen Hongsheng for APEC China 2001 meeting. Recd—December 31, 2001. Est. Value—$3000. Archives Foreign. | The Honorable Chen Liangyu, Acting Mayor, Municipal People's Government of Shanghai. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| President | Oil painting (22″ x 26″): green palm tree with donkey, chair, and multi-colored beach balls; presented in gold frame. Recd—December 31, 2001. Est. Value—$500. Archives Foreign. | His Excellency Hipolito Mejia, President of the Dominican Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Dish: 7″ silver-plated copper with pedestal base and engraved with a killer whale in the center; created by artist Harold Alfred, a member of the Kwakiutl tribe. Recd—February 5, 2001. Est. Value—$500. Archives Foreign. | Mrs. Aline Chretien, Office of the Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | ''Concord'' gym bag with eight baseball hats with ''Concord'' symbol, and four pairs of women's running shoes. Recd—February 15, 2001. Est. Value—$375. Archives Foreign.<br>White straw cowboy hat by the Arlop Hat Company. Recd—February 15, 2001. Est. Value—$150. Archives Foreign. | The Honorable Eduardo Ezequiel Arroyo Roldan, Mayor of San Francisco Del Rincon, Guanajuato. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Books: ''My Love, My Country,'' and ''Praying for Tomorrow: Letters to My Husband in Prison,'' both by Lee Hee-ho, and ''Prison Writings,'' by Kim Daejung. Recd—March 7, 2001. Est. Value—$99. Archives Foreign.<br>Hwagak jewelry box, tiger patterned, 7″ x 4″ x 3″, specially made by J.M. Lee. Recd—March 7, 2001. Est. Value—$396. Archives Foreign. | Mrs. Lee Hee-ho, First Lady of the Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Silver necklace with bird and heart design in a small green jewelry box with gold trim. Recd—March 22, 2001. Est. Value—$110. Archives Foreign.<br>Boots; brown lizard skin with a star stitched in brown on both front and back. Recd—March 22, 2001. Est. Value—$450. Archives Foreign. | His Excellency Vicente Fox Quesada, President of the United Mexican States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

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| First Lady | Brooch: 22 karat gold and amber brooch from ''Onnig of Cairo Egyptian Museum.'' Recd—April 2, 2001. Est. Value—$850. Archives Foreign. | Mrs. Suzanne Mubarak. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Large pine wood chest with crown latch and inlaid with design of crown; containing a wooden bath brush. Recd—April 12, 2001. Est. Value—$200. Archives Foreign.<br>Collection of beauty products contained in chest: two packages of three bars each of soap (mineral, scrub, and black mud); three small burlap bags filled with Dead Sea salts; two bottles of Dead Sea bath salts; one natural sponge; one bees wax candle; one pottery jar filled with Dead Sea bath salts; and one pottery jar filled with Dead Sea mud. Recd—April 12, 2001. Est. Value—$200. Handled pursuant to Secret Service policy. | His Majesty King Abdullah II bin al Hussein of the Hashemite, Kingdom of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Large red shawl with black suede design representing ''The Sky Woman and the Great Tree of Life,'' designed by Tammy Beauvais. Recd—April 20, 2001. Est. Value—$300. Archives Foreign. | Mrs. Aline Chretien, Office of the Prime Minister of Canada. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Embroidered table runner: 15″ x 42″ with a Macedonian design. Recd—May 3, 2001. Est. Value—$75. Archives Foreign.<br>Embroidered tea cloth: 45″ x 42″ with a Macedonian design. Recd—May 3, 2001. Est. Value—$150. Archives Foreign.<br>Embroidered table runner: 16″ x 44″ with a Macedonian design. Recd—May 3, 2001. Est. Value—$75. Archives Foreign. | Mrs. Vilma Trajkovska, Office of the President of Macedonia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Book: 3¼″ x 2¼″ leatherbound pictorial catechism and hardcover ''Catecismo de Fray Pedro de Gante.'' Recd—June 12, 2001. Est. Value—$800. Archives Foreign. | His Excellency Jose Maria Aznar, President of the Government of Spain and Mrs. Aznar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Hardback book: ''Libro de Horas del Viaje de Carlos V Para Ser Coronado Emperador,'' a Coleccion Carlos V. leather bound edition with gold-leaf pages; covers of the book are imprinted with coat of arms. Paperback translation also included. Recd—June 12, 2001. Est. Value—$1800. Archives Foreign. | Her Majesty Sofia, Queen of Spain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Black linen apron stitched with ''Laura Bush.'' Recd—June 14, 2001. Est. Value—$30. Archives Foreign. | His Excellency Goran Persson, Prime Minister of Sweden. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

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| | Four double old fashioned size drinking glasses. Recd—June 14, 2001. Est. Value—$200. Archives Foreign.<br>Two ceramic coffee mugs with the European Union logo. Recd—June 14, 2001. Est. Value—$26. Archives Foreign.<br>Small umbrella with Swedish colors. Recd—June 14, 2001. Est. Value—$22. Archives Foreign.<br>CD produced by a local Swedish group. Recd—June 14, 2001. Est. Value—$15. Archives Foreign.<br>CD: ''Best of Western Gotaland.'' Recd—June 14, 2001. Est. Value—$15. Archives Foreign.<br>Pin with the European Union logo. Recd—June 14, 2001. Est. Value—$20. Archives Foreign. | | |
| First Lady | Purse caramel color, ''Kelly'' style Ferragamo leather handbag. Recd—July 30, 2001. Est. Value—$625. Archives Foreign.<br>Hardback book: ''Il Palazzo Del Quirinale,'' by Electa (Italian). Recd—July 30, 2001. Est. Value—$114. Archives Foreign. | His Excellency Carlo Azegio Ciampi, President of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Shirt: long-sleeve wool shirt with blue and green stripes. Recd—September 10, 2001. Est. Value—$150. Archives Foreign. | The Honorable John Howard, Prime Minister of Australia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Evening bag made of silver, decorated with a leaf pattern. Recd—September 26, 2001. Est. Value—$750. Archives Foreign. | Her Excellency Soekarnopoutri Megawati, President of the Republic of Indonesia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Painting: 19″ × 29″ oil painting of a woman holding a bowl, in a gift-painted wooden frame. Recd—October 9, 2001. Est. Value—$1400. Archives Foreign. | His Excellency Eduard Shevardnadze, President of Georgia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Place card holders (18): silver, six each in shape of a native house, water buffalo, and outrigger boat. Recd—October 24, 2001. Est. Value—$450. Archives Foreign. | Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Mr. Jose Miguel Arroyo. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Vase: handpainted clear glass vase with stopper and rosewood display stand; vase is painted with scene of several Chinese women in traditional dress. Recd—October 24, 2001. Est. Value—$1500. Archives Foreign. | His Excellency Jiang Zemin, President of the People's Republic of China. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Necklace: gold chain with opal pendant and two diamond studs. Recd—October 30, 2001. Est. Value—$1000. Archives Foreign. | The Honorable John Howard, Prime Minister of Australia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
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| First Lady | Robe: white linen and lace caftan embroidered with stars; held in a brown leather case. Recd—November 8, 2001. Est. Value—$425. Archives Foreign. | His Excellency Abedelaziz Bouteflika, President of the People's Democratic Republic of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Jewelry: matching silver brooch, necklace and cuff bracelet with yellow, blue, and green enamel, studded with pieces of coral; held in a blue silk-lined silver box with coral. Recd—November 8, 2001. Est. Value—$500. Archives Foreign. | His Excellency Abdelaziz Bouteflika, President of the People's Deocratic Republic of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Brooch: yellow mother of pearl in the shape of two flowers, set in 18K gold with tsavorite and pink tourmaline stones. Recd—November 21, 2001. Est. Value—$450. Archives Foreign. | Her Excellency Gloria Macapagal-Arroyo, President of the Republic of the Philippines and Mr. Jose Miguel Arroyo. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Table linens: one cream tablecloth with grey embroidery and 12 grey napkins with white border, all by Valentino. Recd—November 21, 2001. Est. Value—$434. Archives Foreign.<br>Tea and coffee service: handpainted white and blue floral Gzhel coffee and tea pots, serving tray, six cups and saucers, and a creamer and sugar bowl. Recd—November 21, 2001. Est. Value—$589. Archives Foreign. | His Excellency Vladimir Putin, President of the Russian Federation. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Tablecloth (60″ x 120″) and napkins (12): white cotton embroidered with multi-colored butterflies. Recd—November 27, 2001. Est. Value—$557. Archives Foreign.<br>Table shawl (24″ x 82″): cream and cream design with fringe. Recd—November 27, 2001. Est. Value—$80. Archives Foreign.<br>Petrified wood pieces (2, 4″ x 4″ x 5″): presented in straw-colored, heart-shaped containers; 2 wooden stands included. Recd—November 27, 2001. Est. Value—$100. Archives Foreign. | His Excellency Didier Ratsiraka, President of the Republic of Madagascar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Porcelain figure (13″): handcrafted Spanish doll, ''Menina'', in blue and white ballgown. Recd—November 28, 2001. Est. Value—$125. Archives Foreign. | His Excellency Jose Maria Aznar, President of the Government of Spain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| First Lady | Necklace: ornate silver with silver charms, oval-shaped coral pieces and silver bow as centerpiece. Earrings (2.5″): silver with small charms attached. Bracklet: silver with small red stone in center. Large silver ring. Pins: miniature sabershaped pins (one gold, one silver, each 2″ x 5″). Recd—December 3, 2001. Est. Value—$1500. Archives Foreign. | His Excellency Ali Abdullah Saleh, President of the Public of Yemen. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Purple fabric (39″ x 174″ ''floating weft brocade'' in raw silk. Recd—Decenber 14, 2001. Est. Value—$1200. Archives Foreign. | His Excellency Thaksin Shinawatra, Prime Minister of the Kingdom of Thailand. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Necklace: gold with bi-color amethyst. Recd—December 18, 2001. Est. Value—$200. Archives Foreign.<br>Hand-woven cloth (35″ x 43″): brown with geometric designs in white, yellow and pink. Recd—December 18, 2001. Est. Value—$375. Archives Foreign.<br>Hand-woven Charazani belt (3″ x 41″): brown with animal designs and topo clasp (9″) of ornate metal. Recd—December 18, 2001. Est. Value—$135. Archives Foreign. | Mrs. Virginia Gillum de Quiroga, First Lady of the Republic of Bolivia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Lady | Bracelet: gold bracelet decorated with two horse heads, diamonds and turquoise; held in a green leather presentation box. Recd—December 21, 2001. Est. Value—$2664. Archives Foreign. | His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan. | Non-acceptance would cause embrassment to donor and U.S. Government. |
| First Family | Chalices (2): coral marble with attached gold handles (7″ x 4¾″ x 4″). Recd—March 29, 2001. Est. Value—$400. Archives Foreign.<br>Frame (15″ x 12″): silver with signed photograph of the King and Queen of Spain; enclosed in a leather box. Recd—March 29, 2001. Est. Value—$225. Archives Foreign. | His Majesty Juan Carlos I, King of Spain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Family | Bag: canvas tote printed with a crest and ''Lansstyrelsen Vastra Gotaland www.o.1st.se.'' Recd—June 14, 2001. Est. Value—$15. Archives Foreign.<br>Fabric: 64″ x 100″ beige and tan fabric. Recd—June 14, 2001. Est. Value—$300. Archives Foreign. | The Honorable and Mrs. Gote Bernhardsson, Governor of Goteborg. | Non-acceptance would case embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
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| | Hardcover book: ''Design from Western Sweden,'' by Flke Edwwards, Gunilla Grahn-Hinnfors, Torsten Hild, Ingrid Sommer, Anders Westgardh. Recd—June 14, 2001. Est. Value—$30. Archives Foreign.<br>Hardcover book: ''Goteborg och dess historia,'' by Gunnar Bohlin. Recd—June 14, 2001. Est. Value—$25. Archives Foreign.<br>Hardcover book: ''Cuisine from Sweden's West at its Best,'' published by Nordbok International AB. Recd—June 14, 2001. Est. Value—$30. Archives Foreign. | | |
| First Family | Porcelain: ''Noble Lady at Leisure'' ceramic sculpture (13″) of a woman dressed in a traditional Chinese robe glazed with bright blue and orange colors. Black wood stand included (11″x 9″ x 1½″). Recd—July 16, 2001. Est. Value—$1450. Archives Foreign. | The Honorable Tung Chee Hwa, Chief Executive of the Hong Kong Special Administrative Region Office of the Chief Executive. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Family | Frame (8½″ x 12″): silver, engraved with the Royal crest; displaying a matted and signed photograph of the Queen. Recd—July 19, 2001. Est. Value—$350. Archives Foreign. | Her Majesty Queen Elizabeth II. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Family | Bags (2): Gilli mustard-colored ostrich leather travel bag, and black and white leather envelope-style handbag. Recd—July 20, 2001. Est. Value—$3300. Archives Foreign. | His Excellency, Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Family | Pitcher 11″ cut glass Gorham pitcher with cylindrical body and sterling silver rim decorated with leaves and engraved with ''RCW'' monogram. Recd—July 27, 2001. Est. Value—$550. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Family | Fragment of Imperial Porphyry (purple stone) in burgundy leather box. Recd—July 30, 2001. Est. Value—$125. Archives Foreign.<br>Scarf: 33″ silk scarf based on tapestry that hangs in President Ciampi's office. Recd—July 30, 2001. Est. Value—$80. Archives Foreign. | His Excellency Carlo Azeglio Ciampi, President of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Family | Medals (3): the Pontiff on one side, Jesus on reverse (gold, silver and bronze); held in white leather case with crest of the Vatican. Recd—July 30, 2001. Est. Value—$1875. Archives Foreign. | His Holiness John Paul II. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| First Family | Pitchers: pair of antique crystal pitchers with silver detail. Recd—October 16, 2001. Est. Value—$1500. Archives Foreign. | His Excellency Silvio Berlusconi, President of the Council of Ministers of the Italian Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Family | Silver tray with engraved flowers around edges (9.5″ x 12.5″). Recd—December 31, 2001. Est. Value—$350. Archives Foreign. | His Excellency Lalit Mansingh, Ambassador of India. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Daughter Barbara Bush | Necklace: seven strands of coral beads clasped at two points with silver balls and large silver piece in center with five charms attached (13″ x 13″ x 13″); and miniature saber-shaped pin (3.5″ x 3.5″). Recd—December 3, 2001. Est. Value—$750. Archives Foreign. | His Excellency Ali Abdullah Saleh, President of the Republic of Yemen. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| First Daughter Jenna Bush | Necklace: seven strands of coral beads clasped at two points with silver balls and large silver piece in center with five charms attached (13″ x 13″ x 3″); and miniature saber-shaped pin (3.5″ x 3.5″). Recd—December 3, 2001. Est. Value—$750. Archives Foreign. | His Excellency Ali Abdullah Saleh, President of the Republic of Yemen. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Bradtke, Robert A. Executive Secretary, NSC. | Vase: pale green glazed vase with one large white peony and one pink peony (approximately 10″ x 30″). Recd—July 19, 2001. Est. Value—$400. Archives, Staff Gift. | His Excellency Junichiro Koizumi, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Card, Andrew H., Jr., Assistant to the President and Chief of Staff. | Vase: large pottery vase (11″ x 34″) with a flock of white cranes flying on a background of gold colored paint with mountains in the background in gray over a clay colored surface. Recd—April 16, 2001. Est. Value—$650. Archives, Staff Gift. | His Excellency Shunji Yanai, Ambassador of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Card, Andrew H., Jr., Assistant to the President and Chief of Staff. | Decorative Plate: ''Fukagawa Porcelain'' (approximately 10″ diameter) with two cranes and blue and gold trim. Black lacquer display stand included. Recd—July 27, 2001. Est. Value—$350. Archives, Staff Gift. | His Excellency Junichiro Koizumi, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Card, Andrew H., Jr., Assistant to the President and Chief of Staff. | Candle holder: ''Frazer and Haws of London'' sterling silver candle holder on a wooden base (approximately 11″ x 3½″), presented in a red velvet box embossed with the seal of the Prime Minister of India. Recd—November 27, 2001. Est. Value—$500. Archives, Staff Gift. | His Excellency Atal Bihari Vajpayee, Prime Minister of the Republic of India. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Edson, Gary R. Deputy Assistant to the President for International Economic Affairs & Deputy National Security Advisor. | Vase: 15″ x 4″ dark blue with large white peonies and touch of gold. Recd—July 20, 2001. Est. Value—$750. Archives, Staff Gift. | His Excellency Junichiro Koizumi, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
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| Fenton, Cathy, Special Assistant to the President & White House Social Secretary. | Picture frame: 5″ x 6″ Mikimoto frame for a 4″ x 3½″ photo, decorated on each corner with a small pearl and gold colored decorative painting. Recd—May 31, 2001. Est. Value—$350. Return to sender. | Mrs. Toshiko Yanai, Embassy of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Frazer, Jendayi, Special Assistant to the President & Senior Director, NSC African Affairs. | Seat cushion covers: three dark green leather seat cushion covers approximately 29″ in diameter with gold designs. Recd—June 27, 2001. Est. Value—$600. Archives, Staff Gift. | The Honorable Ahmed Mohammed Makarfi, Governor of Kaduna, Federal Republic of Nigeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Gonzales, Alberto R., Counsel to the President. | Vase: 15″ x 4″ dark blue with peonies and touch of gold. Recd—July 20, 2001. Est. Value—$750. Archives, Staff Gift. | His Excellency Shunji Yanai, Ambassador of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Hadley, Stephen, Assistant to the President & Deputy National Security Advisor. | Vase: pale green glazed vase with one white and one pink peony (approximately 10″ x 30″). Recd—May 4, 2001. Est. Value—$400. Archives, Staff Gift. | His Excellency Yoshiro Mori, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Hadley, Stephen, Assistant to the President & Deputy National Security Advisor. | Silver box: 7½″ x 5″ silver box with green velvet bottom and interior. Recd—September 6, 2001. Est. Value—$500. Archives, Staff Gift. | Lieutenant General Mahmud Ahmed, Director General, Inter-Services Intelligence Directorate. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Lindsey, Larry, Assistant to the President for Economic Policy & Director, National Economic Council. | Vase, large potter vase (11″ x 34″) with a flock of white cranes flying over a gold colored painted background with mountains in the background painted in gray over a clay colored surface. Recd—April 26, 2001. Est. Value—$650. Archives, Staff Gift. | His Excellency Shunji Yanai, Ambassador of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Lindsey, Larry, Assistant to the President for Economic Policy & Director, National Economic Council. | Decorative plate: ''Fukagawa Porcelain'' decorative plate (approximately 10″ diameter) with two cranes and blue and gold trim. Black lacquer display stand included Recd—July 16, 2001. Est. Value—$350. Archives, Staff Gift. | His Execellency Junichiro Koizumi, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Patterson, Torkel, Special Assistant to the President & Senior Director, NSC Asian Affairs. | Scarf: black ''Chateau Robert'' pashmina with silk. Recd—February 13, 2001. Est. Value—$280. Government Property. | Mr. Ray Yang, Director, Western Region NSB, Taipei Economic & Culture Representative Office (TECRO). | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Patterson, Torkel, Special Assistant to the President & Senior Director, NSC Asian Affairs. | Vase: pale green glazed vase with one white and one pink peony in a ginger jar shape, approximately 10″ x 30″. Recd—March 19, 2001. Est. Value—$400. Archives, Staff Gift. | His Excellency Yoshiro Mori, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Patterson, Torkel, Special Assistant to the President & Senior Director, NSC Asian Affairs. | Decorative plate (10″ diameter): ''Fukagawa Porcelain'' decorative plate in blue with white cranes and gold edging. Black lacquer display stand included. Recd—August 20, 2001. Est. Value—$350. Archives, Staff Gift. | His Excellency Junichiro Koizumi, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
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| Patterson, Torkel, Special Assistant to the President & Senior Director, NSC Asian Affairs. | Artwork: Suzzani silk needlework on silk textile base; picture 24½″ x 32″) depicts a classical wooden bridge over a pond; held in a gold colored wooden frame. Recd—November 30, 2001. Est. Value—$600. Archives, Staff Gift. | His Excellency Tam Chien Nguyen, Ambassador of Vietnam. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Briefcase: burgundy leather. Recd—February 6, 2001 Est. Value—$300. Government Property. | His Excellency Adalberto Rodriguez Giavarini, Minister of Foreign Relations, International Trade and Wordship of the Argentine Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Silver box: small, ornately designed silver trinket box with lid. Recd—May 1, 2001. Est. Value—$350. Archives, Staff Gift. | His Excellency Ilir Meta, Prime Minister of the Republic of Albania. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Framed 24″ x 28″ acrylic painting of mountains with green pine trees, signed by ''Leon.'' Recd—May 4, 2001. Est. Value—$375. Archives, Staff Gift. | His Excellency Yerlan Idrisov, Minister of Foreign Affairs of the Republic of Kazakhstan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Vase: large pottery vase (11″ x 34″) with a flock of white cranes flying over a gold colored background with grey mountains in the background over a clay colored surface. Recd—May 4, 2001. Est. Value—$650. Archives, Staff Gift. | His Excellency Yoshiro Mori, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Compote: small ornate silver compote (''ilias LaLaoUNIS'' brand name). Recd—May 21, 2001. Est. Value—$300. Archives, Staff Gift. | His Excellency George Papandreou, Minister of Foreign Affairs of the Hellenic Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Silver incense burner with long, curved handle; presented in a large red leather case with satin lining. Recd—June 21, 2001. Est. Value—$450. Archives, Staff Gift. | His Excellency Yusuf bin Alawi bin Abdullah, Minister Responsible for Foreign Affairs of the Sultanate of Oman. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Silver container (4½ x 18″): decorative silver beads and bands covering surface with an occasional coral bead. Recd—July 12, 2001. Est. Value—$750. Archives, Staff Gift. | His Excellency Abdelaziz Bouteflika, President of the People's Democratic Republic of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Porcelain vase (13″): navy blue and gold, with blue raised applied flowers. Recd—July 25, 2001. Est. Value—$350. Archives, Staff Gift. | Mr. Vladimir B. Rushaylo, Secretary of Russian Security Council. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Decorative plate: ''Fukagawa Porcelain'' decorative plate (approximately 10″ diameter) with two cranes and blue and gold trim. Black lacquer display stand included. Recd—July 27, 2001. Est. Value—$350. Archives, Staff Gift. | His Excellency Junichiro Koizumi. Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
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| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Vessel: sterling silver vessel ''PYXIS'' Design inspired by a Minoan compass (1400 B.C.). Made by ilias LALAoUNIS. Recd—October 5, 2001. Est. Value—$350. Archives, Staff Gift. | His Excellency George Papandreou, Minister of Foreign Affairs of the Hellenic Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rice, Condoleezza, Assistant to the President for National Security Affairs. | Gold coins: four 22k gold coins in a black leather case. Recd—November 7, 2001. Est. Value—$800. Archives, Staff Gift. | His Excellency Shaykh Sabah al-Ahmad al-Jabir Al Sabah, First Deputy Prime Minister and Minister of Foreign Affairs of the State of Kuwait. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Rove, Karl, Senior Advisor to the President. | Vase: pale green glazed vase with one white and one pink peony in a ginger jar shape (approximately 10″ x 30″). Recd—April 30, 2001, Est. Value—$400. Archives, Staff Gift. | His Excellency Yoshiro Mori, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Spellings, Margaret, Assistant to the President for Domestic Policy. | Vase: 15″ x 4″ dark blue vase with peonies and a touch of gold. Recd—July 20, 2001. Est. Value—$750. Archives, Staff Gift. | His Excellency Shunji Yanai, Ambassador of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Tighe, Mary, Director, NSC Asian Affairs. | Vase: white glazed vase with blue mountains, approximately 10″ x 24″, Recd—March 19, 2001. Est. Value—$400. Archives, Staff Gift. | His Excellency Yoshiro Mori, Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Walters, Logan M., Presidential Aide. | Ties (2): one ''Battistoni'' dark blue silk with small ships, and one E. Marinella silk tie from Naples with dark blue and gold dots and small logo. Recd—August 6, 2001. Est. Value—$260. Government Property.<br>Hardcover books: ''The Museums of Genoa Welcome the G8''; ''Liguria The World in One Region''; ''A Window Over the Mediterranean Sea''. Recd—August 6, 2001. Est. Value—Not Applicable. Government Property..<br>Paperback books (4): ''Omaggio al G8 La Maniera Italiana''; The G7/G8 from Rambouillet to Genoa''; ''Liguria terra di poesia''; ''The Delegate's Handbook''. Recd—August 6, 2001. Est. Value—Not Applicable. Government Property.<br>CD and DVD: promotional CD and DVD of ''Genova''. Recd—August 6, 2001. Est. Value—Not applicable. Government Property.<br>Travel case: nylon navy blue travel case with zippered compartments and stitched ''G8 2001'' with Genoa logo, Recd—August 6, 2001. Ext. Value—$50. Government Property. | Genoa G8 Summit 2001 ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: WHITE HOUSE OFFICE AND THE NATIONAL SECURITY COUNCIL—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
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| | Miscellaneous items given in gift pack: seven postcards; magazine; ¾″ dark blue enamel pin with white flag and red cross; one pack of ''G8 2001'' stationery and blue ballpoint pen; and one pack of travel brochures. Recd—August 6, 2001. Ext. Value—Not Applicable. Government Property. | | |

ENTITY: OFFICE OF THE VICE PRESIDENT

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| 148/QC, Vice President ..... | Octagonal porcelain dish by Villa Allegre, reproduction of Chinese porcelain, depicting two birds in a landscape with trees. Recd—February 28, 2001. Est. Value—$275. Archives Foreign. | His Excellency Jamie Gama, Minister of State and Foreign Affairs of Portugal. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 155/QC, Vice President ..... | Four Floral ''Get-Well'' Bouquets that included roses, French tulips, lilacs, and orchids in crystal vases. Recd—March 10, 2001. Est. Value—$1950. Handled pursuant to Secret Service policy. | His Majesty King Fahd Bin Abdulaziz; His Highness Prince Abdullah Bin Abdulaziz; Prince Sultan Bin Abdulaziz; Prince Bandar Bin Sultan Bin Abdulaziz, Royal Kingdom of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 281/QC, Vice President ..... | Small ancient glass vessel from Hebrew archaeological site (50 B.C.) mounted on ornamental silver tripod. Encased in lucite, with inscription to the Vice President. 4″x5″. Recd—March 19, 2001. Est. Value—$290. Archives Foreign. | His Excellency Ariel Sharon, Prime Minister of Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113037/BOYER_C, Vice President | Large round Kutani earthenware vase, painted with flying cranes and gold foil decoration. Recd—April 4, 2001. Est. Value—$600. Archives Foreign. | His Excellency Yoshiro Mori, Former Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 111297/BOYER_C, Vice President | Odalisque Dead Sea Products: assorted toiletries for men and women, including shampoo, soap, and bath salts. Recd—April 16, 2001. Est. Value—$302. Handled pursuant to Secret Service policy. | His Majesty Abdullah II bin al Hussein, of the Hashemite Kingdom of Jordan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113382/BOYER_C, Vice President | Desk set featuring a lump of gold ore from the Mahd Ad-Dahb gold mine and a Baccarat crystal decanter containing Arabian extra-light crude oil; measures 8″x5″x10″ on a black acrylic base. Recd—May 1, 2001. Est. Value—$1000. Archives Foreign. | His Excellency Ali I. Al-Naimi, Minister of Petroleum and Mineral Resources of the Royal Kingdom of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

ENTITY: OFFICE OF THE VICE PRESIDENT—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
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| 113381/BOYER_C, Vice President | Burled wood Boisseliers du Rif humidor, with inlaid wood framing a painting of the Mediterranean, measures 12″x9″. Recd—May 1, 2001. Est. Value—$350. Archives Foreign. | His Excellency Rafiq al-Hariri, Prime Minister of the Republic of Lebanon. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 107541/BOYER_C, Vice President | 750 gram copper modelia with silk screen of ''King David'' and ''Entry in Jerusalem'' by Marc Chagall. Recd—May 2, 2001. Est. Value—$291. Archives Foreign. | His Excellency Moshe Katsav, President of Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 107539/BOYER_C, Vice President | Sterling silver filigree box, measures 4¼″x6½″ with small jaspar stone on lid. Recd—May 2, 2001. Est. Value—$400. Archives Foreign. | His Excellency Ilir Meta, Prime Minister of Albania. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 111331/BOYER_C, Vice President | Engraved silver octagonal box, lined in blue velvet. Measures 7″ in width. Recd—May 2, 2001. Est. Value—$1400. Archives Foreign. | His Excellency Mohamed Hosny Mubarak, President of the Arab Republic of Egypt. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 107467/BOYER_C, Vice President | Sterling silver vessel, design inspired from the Minoan Period (1480 BC). Recd—May 22, 2001. Est. Value—$300. Archives Foreign. | His Excellency George A. Papandreou, Minister of Foreign Affairs of the Hellenic Republic. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113034/BOYER_C, Vice President | Charles Silver Clock mounted with two large Baccarat crystal horse heads on brass base with simulated lapis decorations. Recd—June 1, 2001. Est. Value—$2500. Archives Foreign. | His Excellency Ali I. Al-Naimi, Minister of Petroleum and Mineral Resources, Royal Kingdom of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 108033/BOYER_C, Vice President | Sterling Silver 9″ round tray and 10″ tall incense container with cut work and reposé hinged ball on top. Recd—June 18, 2001. Est. Value—$750. Archives Foreign. | His Excellency Yusef Bin Alawi, Foreign Minister of Oman. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 108034/BOYER_C, Vice President | Large black lacquer box, with mother of pearl inlays in seascape design. Recd—June 22, 2001. Est. Value—$350. Archives Foreign.<br>Black baseball bat signed by Juan Gonzalez of the Texas Rangers. Recd—June 22, 2001. Est. Value—$55. Archives Foreign. | His Excellency Kim Dong Shin, ROK Defense Minister. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 107515/BOYER_C, Vice President | Flowers. Recd—July 10, 2001. Est. Value—$500. Handled pursuant to Secret Service policy. | His Majesty, King Fahd Bin Abdulaziz, Royal Kingdom of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 107520/BOYER_C, Vice President | Flowers. Recd—July 10, 2001. Est. Value—$400. Handled pursuant to Secret Service policy. | His Highness Crown Prince Abdullah Bin Abdulaziz, Royal Kingdom of Saudi Arabia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 112902/BOYER_C, Vice President | Poljot chronograph watch, 23 jewels, stopwatch and calendar features with crest of President Putin. In leather case with crest. Recd—July 20, 2001. Est. Value—$290. Archives Foreign. | His Excellency Vladimir Putin, President of the Russian Federation. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

ENTITY: OFFICE OF THE VICE PRESIDENT—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
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| 109314/BOYER_C, Vice President | Fresh dates, 8.8 lbs ($44); Algerian wine, 12 bottles ($160); Camel saddle with bridle, red and gold saddle blanket, whip, lead, and wooden saddle stand ($1400). Consumables were handled pursuant to Secret Service policy. Recd—August 2, 2001. Est. Value—$1604. Archives Foreign. | His Excellency Abdelaziz Bouteflika, President of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 110239/BOYER_C, Vice President | Silver repousé bowl with Indonesian crest, measures 10.5″ in diameter. Recd—September 17, 2001. Est. Value—$200. Archives Foreign. | Her Excellency Megawati Soukarnopoutri, President of the Republic of Indonesia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113035/BOYER_C, Vice President | Desktop decoration: large Sterling Silver sailboat, with gold vermeil sails. Measures 18″ x 18″ x 7″. Recd—October 1, 2001. Est. Value—$2500. Archives Foreign. | His Highness Hamad Bin Khalifa Al-Thani, Amir of the State of Qatar. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 112125/BOYER_C, Vice President | Ornate silver carafe, measures 12.5″ high by 11″ wide, plate on brass. Recd—October 15, 2001. Est. Value—$300. Archives Foreign. | Sheikh Salman Bin Hamad Al-Khalifa, Crown Prince and Commander in Chief of Bahrain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 112122/BOYER_C, Vice President | Gold vermeil sailboat on black base, measures 13.5″ tall by 13.5″ wide. Recd—November 5, 2001. Est. Value—$1500. Archives Foreign. | Sabah Al-Ahmad Al-Jabir, First Deputy Prime Minister of Foreign Affairs of Kuwait. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113300/MURRAY_M, Vice President. | Silver sword with silver filigree handle inset with stones, and a silver filigree sheath, 24″ in length. Recd—November 27, 2001. Est. Value—$1000. Archives Foreign. | His Excellency Ali Abdullah Saleh, President of the Republic of Yemen. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| | Four cotton shawls or milfeh. Various colors with metallic thread and synthetic fibers. Size approximately 3″ x 6″. Recd—November 27, 2001. Est. Value—$400. Archives Foreign. | . | |
| 112945/BOYER_C, Vice President | Frazer and Haws 6″ tall artwork: silver god, Ganesh, atop a faceted crystal ball, balanced on a silver rat. Marble base. Recd—December 3, 2001. Est. Value—$500. Archives Foreign. | His Excellency Atal Bihari Vajpayee, Prime Minister of the Republic of India. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113638/BOYER_C, Vice President | A 600 Baht and a 30 Baht coin celebrating the Golden Jubilee of King Rama IX's Reign and the 60th Birthday of Queen Sirikit. Recd—December 14, 2001. Est. Value—$20. Archives Foreign. | His Excellency and Mrs. Thaksin Shinawatra, Prime Minister of Thailand. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113639/BOYER_C, Vice President | Sterling silver salver, 8″ in diameter, from Spink & Son, London. Recd—December 21, 2001. Est. Value—$2166. Archives Foreign. | His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113037/BOYER_C, Mrs. Cheney .. | Black and gold lacquer five-drawer jewelry box. Recd—April 4, 2001. Est. Value—$150. Archives Foreign. | His Excellency Yoshiro Mori, Former Prime Minister of Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

ENTITY: OFFICE OF THE VICE PRESIDENT—Continued

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
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| 111314/BOYER_C, Mrs. Cheney .. | Gold pin (18 carat) showing ancient Egyptian in boat; gift to Mrs. Cheney from Suzanne Mubarak. Recd—May 2, 2001, Est. Value—$450. Archives Foreign. | His Excellency Mohamed Hosny Mubarak, President of the Arab Republic of Egypt. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 110239/BOYER_C, Mrs. Cheney .. | Small pierced Sterling Silver evening purse, measures 5″ x 2.5,4″ with hinged lid and 44″ silver chain. Recd—September 17, 2001. Est. Value—$350. Archives Foreign. | His Excellency Megawati Soukarnopoutri, President, Republic of Indonesia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113300/MURRAY _M, Mrs. Cheney. | Silver quill work necklace with semi-precious stones, 23″ long, bow motif 6″ joined to six hanging silver quill motifs and stones on each side; earrings 3″ long; ring 1½″ in diameter; bracelet, bow in center with red stone and quilled scrolls on each side, 1¼″ and 6½″ in diameter. Recd—November 27, 2001. Est. Value—$750. Archives Foreign. | His Excellency Ali Abdulla Saleh, President of the Republic of Yemen. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113638/BOYER_C, Mrs. Cheney .. | Six yards purple Thai silk, with metallic thread, measures 198″ by 40″. Recd—December 14, 2001. Est. Value—$500. | His Excellency and Mrs. Thaksin Shinawatra, Prime Minister of Thailand. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 112944/BOYER_C, Mrs. Cheney .. | Hand-embroiderred orange Pashmina shawl, measures 36″ by 80″. Recd—December 3, 2001. Est. Value—$410. Archives Foreign. | His Excellency Atal Bihari Vajpayee, Prime Minister of the Republic of India. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 113036/BOYER_C, Vice President and Mrs. Cheney. | Large antique reproduction blue and white plum jar, modeled after 15th century jar from the Ho-Am Art Museum in Seoul, Korea. Recd—June 1, 2001. Est. Value—$350. Archives Foreign. | His Excellency Kim Dae-jung, President of the Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| 109314/BOYER_C, Vice President Staff. | Red and black native wool rug approximately 6′6″ by 3′8″ presented to Lewis Libby. Recd—August 2, 2001. Est. Value—$600. Archives Foreign.<br>Hand-painted tile work scene of Algerian seaport presented to Chris Bolan. Framed, Highly decorative. Measures 18″ x 24″. Framed in simulated wood, one inch frame. Recd—August 2, 2001. Est. Value—$500. Archives Foreign.. | His Excellency Abdelaziz Bouteflika, President of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF STATE

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Colin Powell, Secretary of State .... | Diorama, 22″x14″, mother of pearl and abalone shell depicting ''The Last Supper'' and ''The Nativity'' in Bethlehem, also with numerals for the year 2000, Palestine, late 20th century, fitted red velvet case. Rec'd—January 25, 2001. Est. Value—$1,000.00. Pending transfer to GSA. | His Excellency Yasser Arafat, Chairman, Palestine Liberation Organization. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Icon, 14″x12⅛″, polychrome wood with gold ground, Christ and Saints, Serbia, 18th/19th century. Rec'd—February 2, 2001. Est. Value—$1,000.00. Pending transfer to GSA. | His Excellency Zoran Djindjic, Prime Minister, Republic of Serbia. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Vase, 7″ H, porcelain of globular form with tiny mouth and, incised celadon glaze, ''diatreta'' filigree outside the solid body composed of florets, Korea, late 20th century, wood box. Rec'd—February 7, 2001. Est. Value—$500.00. Pending transfer to GSA. | His Excellency Lee Joung-binn, Minister of Foreign Affairs and Trade, Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Coffee pot, 12½″ H, sterling silver with gilt interior, mounted with the Kuwaiti coat of arms, leather and woven metal strip handle, late 20th century—45 ozsT, together with six Limoges porcelain cups, red leather fitted case. Rec'd—February 23, 2001. Est. Value—$1,000.00. Pending transfer to GSA. | His Highness Shaykh Jabir al-Ahmad Al Sabah Amir, State of Kuwait. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Medal, commemorative, 38.61 mm, proof 22 karat yellow gold, 40th Anniversary of the National Day of the State of Kuwait, 2001, plastic case, 47.54 g and Medal, commemorative, 55 mm, proof sterling silver, 72.5 g. Rec'd—February 23, 2001. Est. Value—$475.00. Pending transfer to GSA. | His Excellency Shaykh al-Ahmad al-Jabir Al Sabah, First Deputy Prime Minister and Minister of Forei, State of Kuwait. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Robes (bishts) brown cotton and black cotton gauze fabric, each with gold embroidery, Kuwait, late 20th century. Rec'd—February 23, 2001. Est. Value—$350.00. Pending transfer to GSA. | His Excellency Shaykh Sabah al-Ahmad al-Jabir Al Sabah, First Deputy Prime Minister and Minister of Forei, State of Kuwait. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Robes (bishts) brown cotton and black cotton gauze fabric, each with gold embroidery, Kuwait, late 20th century. Rec'd—February 23, 2001. Est. Value—$350.00. Pending transfer to GSA. | His Excellency Shaykh Sabah al-Ahmad al-Jabir Al Sabah, First Deputy Prime Minister and Minister of Forei, State of Kuwait. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

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| Colin Powell, Secretary of State .... | Arrows, 23¼″x34″, bamboo shafts with four black stone and one wood head, feather ends, mounted against a sumi on paper drawing of a deer hunt, Korea, 20th century, matted and framed. Rec'd—March 7, 2001. Est. Value—$350.00. Pending transfer to GSA. | His Excellency Kim Dae-jung, President, Republic of Korea. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Mrs. Alma Powell, Spouse, Secretary of State. | Fabric, 30″x240″, silk brocade with oriental motif, China, late 20th century. Rec'd—March 21, 2001. Est. Value—$300.00. Pending transfer to GSA. | Madame Zhou Hangiong, Spouse, People's Republic of China.. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Scribe's pen box and inkwell, 10¾″L, 900 silver with chased decoration, Turkish 20th century copy of the 17th century Ottoman original, fitted box, 160zsT. Rec'd—March 30, 2001. Est. Value—$500.00. Pending transfer to GSA. | His Excellency Ismail Cem, Minister of Foreign Affairs Republic of Turkey. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Cigarette box, 7½″L, sterling silver, lid engraved with the Royal Jordanian coat of arms and the facsimile signature of King Abdullah, by Kuhn, Germany, #27 late 20th century, fitted case, gross weight 20ozsT. Rec'd—April 4, 2001. Est. Value—$500.00. Pending transfer to GSA. | Their Majesties King Abdullah II bin al Hussein and Queen Rania King and Queen Hashemite Kingdom of Jordon. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Vase, 10½″ H, Kutani ceramic with parcel gold ground and white cranes, Japan, late 20th century, wood box. Rec'd—April 4, 2001. Est. Value—$750.00. Pending transfer to GSA. | His Excellency Yoshiro Mori, Prime Minister, Japan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Bowls, 7¾″ diameter, pierced, chased and repoussed sterling silver, India, late 20th century, 8ozsT, fitted box. Rec'd—April 6, 2001. Est. Value—$300.00. Pending transfer to GSA. | His Excellency Jaswant Singh, Minister of External Affairs, Republic of India. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Drum, 44½″ Hx13½″ diameter, stretched skin on carved wood depicting many figures engaged in a celebration, other celebrating figures to column, portrait heads, Africa, 3rd quarter to late 20th century. Rec'd—April 17, 2001. Est. Value—$450.00. Pendings transfer to GSA. | Chief Mila Assoure, Member of the Central Committee on the RDCP Republic of Cameroun. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Painting, oil on canvas board, 15½″x15½″, village scene, by H. Jouni, late 20th century, matted and framed. Rec'd—April 25, 2001. Est. Value—$400.00. Pending transfer to GSA. | His Excellency Rafiq al-Hariri, Prime Minister, Republic of Lebanon. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Icon, 12″ x 8½″, polychrome and gold ground on wood panel depicting St. George and the Dragon, Bulgaria, dated 2001. Rec'd—April 25, 2001. Est. Value—$300.00. Pending transfer to GSA. | His Excellency Ivan Kostov, Prime Minister, Republic of Bulgaria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

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| Colin Powell, Secretary of State .... | Plaque, 12¾″x10¼″, 800 silver easel frame inset with turquoise color panel mounted with silver map of Bahrain and islands studded with seed pearls and set with 96 round diamonds TW 3.75 carats, late 20th century. Rec'd—May 7, 2001. Est. Value—$4,000.00. Pending transfer to GSA. | His Highness Shaykh Hamad bin Essa Al Khalifa Amir, State of Bahrain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Sculpture—Tribal, carved wood, seated male and female figures. Rec'd—May 23, 2001. Est. Value—$750.00. Pending transfer to GSA. | His Excellency Mobido Sidibe, Minister of Foreign Affairs and Malians Abroad, Republic of Mali. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Painting, oil on canvas, 30″x37½″, Thompson's Gazelle, by (Francis?) Taga, Africa, 2000, wood frame. Rec'd—May 27, 2001. Est. Value—$750.00. Pending transfer to GSA. | His Excellency Yoweri Kaguta Museveni, President Republic of Uganda. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Plaque, 7½″ diameter, copper with relief ''King David'', centered with a polychrome enamel picture of King David, #881/2450, after Marc Chagall, 20th/21st century, framed and boxed. Rec'd—May 31, 2001. Est. Value—$400.00. Pending transfer to GSA. | His Excellency Moshe Katsav, President, Israel. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Diorama, 22″x14″, abalone shell and mother of pearl depicting ''The Nativity'' in Bethlehem, Palestine, late 20th century, fitted red velvet case. Rec'd—June 28, 2001. Est. Value—$750.00. Pending transfer to GSA. | His Excellency Yasser Arafat, Chairman, Palestine Liberation Organization. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Sword, 29″L with scabbard, sliver filigree set with 16 coral cabochons, Algerian, 20th/21st century, 44ozsT including blade. Rec'd—July 12, 2001. Est. Value—$2,000.00. Pending transfer to GSA. | His Excellency Abdelaziz Boutefilka, President, Republic of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Bowl, footed, 10½″x8½″ oval, Chinese Export porcelain with polychrome enamel figures, flowers and colophons to exterior, China, mid to 3rd quarter 19th century, boxed. Rec'd—July 25, 2001. Est. Value—$350.00. Pending transfer to GSA. | Mr. Tung Chee-Hwa, Executive, Government of Hong Kong. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Five volumes: ''The Complete Sagas of Icelanders'', published by Leifur Eirksson, late 20th century, boxed. Rec'd—August 8, 2001. Est. Value—$390.00. Pending transfer to GSA. | His Excellency Halldor Asgrimsson, Minister of Foreign Affairs, Republic of Iceland. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

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|---|---|---|---|
| Colin Powell, Secretary of State .... | Beaker, 4″H, sterling silver, repousse with geometric, ''Aztec'' decoration, by Marmolejo-Izta, Mexico, 20th/21st century. 10ozsT. Rec'd—September 6, 2001. Est. Value—$350.00. Pending transfer to GSA. | His Excellency Vicente Fox, United Mexican States. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Model of a temple, 7¼″ H, silver, Indonesia, 20th/21st century, 32ozsT, boxed. Rec'd—September 19, 2001. Est. Value—$550.00. Pending transfer to GSA. | His Excellency Soekamopoutri Megawati, President, Republic of Indonesia. | Non-acceptance would cause embarrassment of donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Cup, handled, 3″ H, sterling silver, repoussed with ancient Greek scene, reproduction by Ilias Lalaounis, Greece, 20th/21st century, boxed. Rec'd—October 3, 2001. Est. Value—$400.00. Pending transfer to GSA. | His Excellency George Papandreou, Minister of Foreign Affairs, Hellenic Republic (Greece). | Non-acceptance would cause embarrassment of donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Painting, oil on canvas, 27″ x 27″ Georgian Mythological scene, by Gia Bugadze, 20th/21st century, framed. Rec'd—October 5, 2001. Est. Value—$500.00. Pending transfer to GSA. | His Excellency Eduard Shevardnadze, President, State of Georgia. | Non-acceptance would cause embarrassment of donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Sculpture, 12¼″x12¼″, sterling silver, made London 1995–6 by ''GGM'', depicting a fort and centered with the coat of arms of Qatar, walnut base, fitted leather case, 150ozsT. Rec'd—October 5, 2001. Est. Value—$5,000.00. Pending transfer to GSA. | His Highness Sheikh Hamad bin Khalifa Al Thani Amir, State of Qatar. | Non-acceptance would cause embarrassment of donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Plaque, 38″x24″, sheet copper with polychrome decoration centered with a repousse figure of a tribal dancer, by Mumba, 2001, framed. Rec'd—November 1, 2001. Est. Value—$850.00. Pending transfer to GSA. | His Excellency Joseph Kabila, President, Democratic Republic of the Congo. | Non-acceptance would cause embarrassment of donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Diorama, 22″x14″, abalone shell and mother of pearl depicting ''The Nativity'' in Bethlehem, Palestine, late 20th century, fitted red velvet case. Rec'd—November 9, 2001. Est. Value—$750.00. Pending transfer to GSA. | His Excellency Yasser Arafat, Chairman, Palestine Liberation Organization. | Non-acceptance would cause embarrassment of donor and U.S. Government. |
| Mrs. Alma Powell, Spouse, Secretary of State. | Necklace, bracelet, pair of earrings and ring, silver filigree with coral beads, Yemen, 20th/21st century, boxed. Rec'd—November 27, 2001. Est. Value—$450.00. Pending transfer to GSA. | His Excellency Ali Abdullah Saleh, President, Republic of Yemen. | Non-acceptance would cause embarrassment of donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Dagger, bent, silver hilt and scabbard set with 6 carnelian cabochons, Yemen, 20th/21st century, boxed. Rec'd—November 27, 2001. Est. Value—$1,250.00. Pending transfer to GSA. | His Excellency Ali Abdullah Saleh, President, Republic of Yemen. | Non-acceptance would cause embarrassment of donor and U.S. Government. |

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

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|---|---|---|---|
| Colin Powell, Secretary of State .... | Gravy boat, 9 38″ L, hand wrought sterling silver, two side handles, by Ilias Lalaounis, Greece, late 20th century. Rec'd—December 1, 2001. Est. Value—$300.00. Pending transfer to GSA. | His Excellency George Papandreou, Minister of Foreign Affairs, Hellenic Republic (Greece). | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Scribe's box, 10¾″ L, 900 silver decorated with bright cut engraving, Turkey, late 20th century. Rec'd—December 2, 2001. Est. Value—$400.00. Pending transfer to GSA. | His Excellency Ismail Cem, Minister of Foreign Affairs, Republic of Turkey. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Bowl, 6¼″ diameter across two mountain goat head handles, silver, gilt lined, set with 8 cabochon carnelians and 6 cabochon chrysoprases, Kazakhstan reproduction of a ''Saks'' bowl, stitched leather presentation box. Rec'd—December 9, 2001. Est. Value—$300.00. Pending transfer to GSA. | His Excellency Nursultan Nazarbayev, President, Republic of Kazakhastan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Coverlet, 86″x105″, patchwork pieces of cloth, mid 20th century. Rec'd—December 15, 2001. Est. Value—$375.00. Pending transfer to GSA. | His Excellency Maleeha Lodhi, Ambassador to the United States, Islamic Republic of Pakistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Donal Burnham Ensenat, Chief of Protocol. | Dagger, 17″ H, silver filigree hilt and scabbard set with 15 orange coral cabochons, Algerian, late 20th century, wood box. Rec'd—July 12, 2001. Est. Value—$400.00. Retained for Official Use. | His Excellency Abdelaziz Boutefilka, President, Democratic Republic of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Department of State ..... | Desktop implements, leather box, Asprey, London, late 20th century: 18K yellow gold clock with 55 round diamonds TW2 carats, 2 Mont Blanc silver gilt (vermeil) pens, a green lizard change purse, & pair 18K gold, diamond, emerald & mabe pearl earrings. Rec'd—Est. Value—$15,000.00. Pending transfer to GSA. | Unknown.. | |
| Colin Powell, Secretary of State .... | Orthodox egg, 6¾″ H, pierced sterling silver gilt (vermeil) with reddish orange enamel and set with imitation diamonds, Russian, late 20th century. Rec'd—December 9, 2001. Est. Value—$2,000.00. Pending transfer to GSA. | His Excellency Igor Ivanov, Minsiter of Foreign Affairs, Russian Federation. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Carpet, 45″ x 63″, wool and silk on cotton, tan field with geometric caucasian design, multiple borders, Uzbekistan, 20th/21st century. Rec'd—November 5, 2001. Est. Value—$1,850.00. Retained for Official Use. | His Excellency DPM Tashkent, Republic of Uzbekistan. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin Powell, Secretary of State .... | Carpet, 9′7″ x 6′5″, wool on cotton, red, green and yellow geometric design, Algeria, 20th/21st Century. Rec'd—July 12, 2001. Est. Value—$1,000.00. Pending transfer to GSA. | His Excellency Abdelaziz Bouteflika, President, Democratic Republic of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Colin Powell, Secretary of State .... | Wine Rec'd—November 5, 2001. Est. Value—$54.00. Handled pursuant to Department of State procedures. | His Excellency Abdelazia Bouteflika, President, Democratic Republic of Algeria. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin L. Powell, Secretary of State | Candleholder, 11″ H plus base, pierced sterling silver body, pricket base with wood bottom, by Frazer & Haws, India, 20th/21st century, 10ozsT plus base, boxed. Rec'd—November 9, 2001. Est. Value—$700.00, Pending transfer to GSA. | His Excellency Jaswant Singh, Minister of External Affairs, Republic of India. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Colin L. Powell, Secretary of State | Coffee pot, 13″ H, silver, typical form, engraved ground, by Al Mannai, Bahrain, 20th/21st century, 44ozsT. Rec'd—November 30, 2001. Est. Value—$1,000.00. Pending transfer to GSA. | His Excellency Shaykh Mohammed bin Mubarak Al Khalifa, Minister of Foreign Affairs, State of Bahrain. | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Johnny Young and Mrs. Johnny Young, U.S. Ambassador. | Bracelet, gold with miniature pearls. Rec'd—Est. Value—$500.00. Pending Transfer to GSA. | State of Bahrain ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Johnny Young, U.S. Ambassador | Carpet, silk 4½′x6½′ oriental design. Rec'd—December 1, 2001. Est. Value—$5,000.00. Retained for Official Use—Embassy Manama. | State of Bahrain ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| Ronald E. Neumann, U.S. Ambassador. | Watches, matching men's and women's stainless steel and alloy wrist watches, Pierre Perron of Paris, boxed Rec'd—September 30, 2001. Est. Value—$400.00. Pending transfer to GSA. | State of Bahrain ..... | Non-acceptance would cause embarrassment to donor and U.S. Government. |
| George Tietjen, RSO ..... | Laptop Computer. Rec'd—. Est. Value—$2,000.00. Pending transfer to GSA. | Brig. General Issa, Syria ..... | Attempted on several occasions to refuse gift—all of which were unsuccessful. |

AGENCY: DEPARTMENT OF THE TREASURY

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Edwin M. Truman, Assistant Secretary for International Affairs. | Bills and monies of Ecuador in circulation. Rec'd—Nov. 2, 2000. Est. Value—$1,400. To be excessed to GSA. | Luis Yturralde, Finance Minister, Govt. of Eduador. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Paul H. O'Neill, Secretary of Treasury. | Small silver dish. Rec'd—Mar. 15, 2001. Est. Value—$400. To be excessed to GSA. | Andres Pastrana, President, Govt. of Columbia. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Paul H. O'Neill, Secretary of Treasury. | Australian blackwood box with gavel and hammer. Rec'd—Jul 6, 2001, Est. Value—$1,500. To be excessed to GSA. | Mr. Chino, President of Asian Development Bank. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Paul H. O'Neill, Secretary of Treasury. | Handmade cold cast bronze sculpture. Rec'd—Jul 6, 2001. Est. Value—$380. To be excessed to GSA. | John Kufuor, President, Govt. of Ghana. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Paul H. O'Neill, Secretary of Treasury. | Icon of St. George slaying the dragon. Rec'd—Jul 27, 2001. Est. Value—$880. To be excessed to GSA. | Mr. Kudrin, Finance Minister of Russia. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF THE TREASURY—Continued

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| James H. Fall, III, Deputy Assistant Secretary, Technical Assistance Policy. | Gold coin commemorating 2000 years of Christmas. Rec'd—Sep 28, 2001. Est. Value—$300. To be excessed to GSA. | Petro O. Poroshenko, People's Deputy of Ukraine. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF DEFENSE

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government estimate value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Donald H. Rumsfeld, Sec. of Defense. | Cotton rug. Rec'd—Oct. 4, 2001. Est. Value—$350.00. Reported to GSA—Pending Sec. Def. Decision. | Field Marshall Hussein Tantawy, Egypt. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald H. Rumsfeld, Sec. of Defense. | Silver Flatware (24 piece set). Rec'd—Oct. 4, 2001. Est. Value—$560.00. Reported to GSA—March 13, 2001. Decision. | President Islam Karimov, Uzbekistan. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald H. Rumsfeld, Sec. of Defense. | Coin set honoring 2002 FIFA World Cup Korea Japan. Rec'd—Nov. 15, 2001. Est. Value—$275.00. Reported to GSA—Pending. | Korean MOD, Kim Dong-Shin ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald H. Rumsfeld, Sec. of Defense. | Silver spoons w/ ducks on handles. Rec'd—Nov. 15, 2001. Est. Value—$275.00. Reported to GSA—Pending. | Korean MOD, Kim Dong-Shin ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald H. Rumsfeld, Sec. of Defense. | Tiffany crystal bowl. Rec'd—Dec. 15, 2001. Est. Value—$420.00. Reported to GSA—Pending. | Salim Al-Abdallah Jabir Al Sabah, Ambassador Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald H. Rumsfeld, Sec. of Defense. | Silk carpet. Rec'd—Dec. 16, 2001. Est. Value—$390.00. Reported to GSA—Pending. | Fahid Kahn, MOD Afghanistan .... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald H. Rumsfeld, Sec. of Defense. | Painting of (Adoration of the Magi). Rec'd—Dec. 15, 2001. Est. Value—$340.00. Reported to GSA—Pending Sec. Def. Decision. | President Schevardnadze, Georgia. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald H. Rumsfeld, Sec. of Defense. | Silver, gold multicolored sword. Rec'd—Dec. 15, 2001. Est. Value—$360.00. Reported to GSA—Mar. 13, 2001. | MOD Safar Abiyev, Azerbaijan .... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald H. Rumsfeld, Sec. of Defense. | Large wood chest w/brass and copper. Rec'd—Nov. 4, 2001. Est. Value—$340.00. Reported to GSA—Mar. 13, 2001. | President General Pervez Musharraf of Pakistan. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald H. Rumsfeld, Sec. of Defense. | Painting of a village in front of a mountain. Rec'd—Nov. 29, 2001. Est. Value—$340.00. Reported to GSA—Jan. 30, 2002. | MOD Kodir Gulomov, Uzbekistan | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Mrs. Rumsfeld, Spouse of Sec. of Defense. | Gold necklace. Rec'd—Oct. 4, 2001. Est. Value—$925.00. Reported to GSA—Pending Sec. Def. Decision. | Field Marshall Hussien Tantawy, Egypt. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Gen. Henry H. Shelton, CJCS ..... | CSX Diamond Chronograph watch. Rec'd—Jul 17, 2001. Est. Value—$350.00. Reported to GSA—Oct 30, 2001. | Maj. Gen. Hamad Ali al-Attiyah, Chief of Staff, Qatar Armed Forces. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Gen. Henry H. Shelton, CJCS ..... | Wooden ship model. Rec'd—May 1, 2001. Est. Value—$550.00. Reported to GSA—Jul 30, 2001. | General Manoussos Paragioudakis, Chief Of the Hellenic National Defense General Staff. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government estimate value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Gen. Heny H. Shelton, CJCS ..... | Silver Bowl and Plate set. Rec'd—Jun 5, 2001. Est. Value—$270.00. Reported to GSA—Jul 6, 01. | Lt. General Madgy Hatata, Egyptian Chief Defense. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Gen. Henry H. Shelton, CJCS and Spouse Mrs. Carolyn J. Shelton. | Concord watch. Rec'd—Jul 17, 2001. Est. Value—$780.00. Reported to GSA—Oct 30, 2001. | Maj Gen. Hamad Ali al-Attiyah, Chief of Staff, Qatar Armed Forces. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Gen. Henry H. Shelton, CJCS and Spouse Mrs. Carolyn J. Shelton. | Gold Bracelet. Rec'd—Jun 5, 2001. Est. Value—$1,200.00. Reported to GSA—Jul 30, 2001. | Lt. Gen Magdy Hatata, Egyptian Chief of Defense. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Gen. Henry H. Shelton, CJCS and Spouse Mrs. Carolyn J. Shelton. | Gold Scarab Necklace. Rec'd—Jun 5, 2001. Est. Value—$650.00. Reported to CSA—Jul 30, 2001. | Field Marshal Hussein Tantawy CINC Of the Armed Forces, MOD, Military Production. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF THE NAVY

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Guy R. Abbate, Jr. Naval Justice School, Newport. | Man's watch. Recd—November 16, 2001. Est. Vaule—$1080. Being retained at CNO (N09B13). | United Arab Emirates ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| William C. Aseltine, Naval Justice School, Newport. | Man's watch. Recd—November 16, 2001. Est. Value—$1080. Being retained in CNO (N09B13). | United Arab Emirates ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Capt. Dennis G. Bengtson, Naval Justice School, Newport. | Man's watch. Recd—November 16, 2000. Est. Value—$1080. Being retained in CNO (N09B13). | United Arab Emirates ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Kathleen Bengston, spouse of Capt. Bengtson, Naval Justice School, Newport. | Woman's watch. Recd—November 16, 2000. Est. Value—$1500. Being retained at CNO (N09B13). | United Arab Emirates ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Cassie A. Cioci, Naval Justice School, Newport. | Woman's watch. Recd—November 16, 2000. Est. Value—$850. Being retained at CNO (N09B13). | United Arab Emirates ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Adm. V.E. Clark, Chief of Naval Operations. | Gold brass plaque. Recd—23 Mar 2001. Est. Value—$300. Being retained at CNO (N09B13). | Singapore Navy ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Adm. Thomas B. Fargo, Commander in Chief, U.S. Pacific Fleet. | Necklace. Recd—April 19, 2001. Est. Value—$475. Being retained at CN09B13). | Republic China Navy ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Karl Farris, Naval Justice School, Newport. | Man's watch. Recd—November 16, 2000. Est. Value—$1080. Being retained at CNO (N09B13). | United Arab Emirates ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| RAdm. Richard B. Porterfield, Director, Naval Intelligence. | Necklace cuff links silver set. Recd—January 30, 2001. Est. Value—$300. Being retained at CNO (N09B13). | Egyptian Military Directorate ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Adm. Thomas B. Fargo, Commander in Chief, U.S. Pacific Fleet. | Man and woman's watch. Recd—July 30, 2001. Est. Value—$1200. Official use. | Japan National Defense League .. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| BGen. Leif H. Hendrickson, Marine Corps University. | Framed print. Recd—December 6, 2001. Est. Value—$300. Command display. | Australian Army ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Col. Craig Huddleston, Command and Staff College. | Model aircraft in case. Recd—November 28, 2001. Est. Value—$350. Command display. | Saudi Air Force ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: DEPARTMENT OF THE NAVY—Continued

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Col. David Reist, Command and Staff College. | Model aircraft in case. Recd—November 28, 2001. Est. Value—$300. Command display. | Saudi Air Force ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| LtGen. Frank Libutti U.S. Marine Forces, Pacific. | Fountain pen. Recd—August 10, 2001. Est. Value—$350. Command for official use. | Republic of Korea ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| VAdm. Charles W. Moore, Jr., Commander, U.S. Naval Forces Central Command. | Recd—March 6, 2001. Value—$2450. Expended for hotel and meals. | UAE Armed Forces ..... | Official trip. |

AGENCY: DEPARTMENT OF THE AIR FORCE

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Colonel Robert E. Chapman II, Chief, Saudi Arabia Division, International Affairs (SAF/IARS), Washington, DC. | Men's Rolex ''Air King,'' silver-faced Oyster Perpetual watch, model #14010, serial #P–709764. Recd—June 2001. Est. Value—$2,100. On official display at SAF/IARS, pending turn-in to GSA. | Major General Mohammed A. Al-Ayeesh, Director, Logistics and Supply, Royal Saudi Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Colonel Jeffery S. Cohen, Deputy Commander, 32d Air Operations Group, RAF Mildenhall, United Kingdom. | Two uncarved elephant tusks, each 15 inches tall. Recd—October 23, 2000. Est. Value—$1,000. Destroyed, November 3, 2001. | Air Marshall Alfa, Chief of Staff, Nigerian Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| General Ralph E. Eberhart, Commander in Chief/U.S. Space Command, NORAD, Colorado Springs, Colorado. | Persian Tabriz-stylized Heriz design Oriental rug, 5′1″ by 6′8″, light green and lavender central medallion on a peach-colored field. Recd—January 15, 2001. Est. Value—$2,300. On official display at HQ NORAD, Colorado. | Mr. Abdulazim Karaman, Senior Arab Affairs Advisor, Saudi Arabia. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Colonel Steven R. Eddy, Director of Operations, 3 AF, RAF Mildenhall, United Kingdom. | Two carved elephant tusks, each 17 inches tall. Recd—October 23, 2000 Est. Value—$1,000. Destroyed, November 3, 2001. | Air Marshall Alfa, Chief of Staff, Nigerian Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Major General Kenneth W. Hess, Commander, 3 AF, RAF Mildenhall, United Kingdom. | One carved elephant tusk, 15-inches tall. Recd—October 23, 200. Est. Value—$500. Destroyed, November 3, 2001. | Air Marshall Alfa, Chief of Staff, Nigerian Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Colonel Karl A. Kaszuba, Staff Judge Advocate, 3 AF, RAF Mildenhall, United. | Two carved elephant tusks, 18-inches tall. Recd—October 23, 2000. Est. Value—$1,000. Destroyed, November 3, 2001. | Air Marshall Alfa, Chief of Staff, Nigerian Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Major General David F. MacGhee, Jr., Commandant, Air War College (AWC), Maxwell Air Force Base, Alabama. | 18-carat gold and jade prayer beads Recd—April 17, 2001. Est. Value—$2,500. On official display at AWC, Maxwell Air Force Base, Alabama. | His Royal Highness Prince Bandar Bin Sultan Bin Abdulaziz, Ambassador of Saudi Arabia to the United States. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Colonel Phillip C. Miller, Jr., Director of Logistics, 3 AF, RAF Mildenhall United Kingdom. | Two carved elephant tusks, 17-inches tall, Recd—October 23, 200. Est. Value—$1,000. Destroyed, November 3, 2001. | Air Marshall Alfa, Chief of Staff, Nigerian Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Mr. Willard Mitchell, Deputy Under Secretary, International Affairs (SAF/IA), Washington, D.C. | Men's Rolex ''Air King'' pink Arabic oyster perpetual watch, model #14000, serial #U653804. Recd—June 27, 2001. Est. Value—$2,100. Pending turn-in to GSA. | Major General Mohammed A. Al-Ayeesh, Director, Logistics and Supply, Royal Saudi Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |

AGENCY: DEPARTMENT OF THE AIR FORCE—Continued

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Mr. Willard Mitchell, Deputy Under Secretary, International Affairs (SAF/IA), Washington, D.C. | Women's Rolex ''Air King'' pink Arabic oyster perpetual watch, model #76080, serial #P150416. Recd—June 27, 2001. Est. Value—$2,100. Pending turn-in to GSA. | Major General Mohammed A. Al-Ayeesh, Director, Logistics and Supply, Royal Saudi Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Colonel James R. Nelson, Commander, Air Force Office of Special Investigations—United Kingdom, RAF Mildenhall, United Kingdom. | Two carved elephant tusks, 17-inches tall. Recd—October 23, 2000 Est. Value—$1,000. Destroyed, November 3, 2001. | Air Marshall Alfa, Chief of Staff, Nigerian Air Force Forces. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Mr. Ronald L. Orr, Assistant Deputy Chief of Staff, Air Force Installations and Logistics, Washington, D.C. | Stainless steel Rolex oyster perpetual watch with Saudi Air Force emblem, model 14000, serial #P708733. Recd—June 29, 2001. Est. Value—$1,000. Pending turn-in to GSA. | Major General Mohammed A. Al-Ayeesh, Director, Logistics and Supply, Royal Saudi Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| General Michael E. Ryan, Chief of Staff, USAF, Washington, D.C. | Painting and ceramic fruit string. Recd—June 15, 2001. Est. Value—$375 aggragately. Turned in to GSA, October 11, 2001. | Colonel Mario Rene Siliezar Giron, Commander, Guatemalan Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| General Michael E. Ryan, Chief of Staff, USAF, Washngton, D.C. | Painting. Recd—June 15, 2001. Est. Value—$550. Turned in to GSA, October 11, 2001. | Lt. General Jose Malaquin Correa, Commander, Uruguay Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| General Michael E. Ryan, Chief of Staff, USAF, Washington, D.C. | Painting. Recd—June 5, 2001. Est. Value—$600. Turned in to GSA, October 11, 2001. | ACM Squire, Commander-in-Chief, Royal Air Force, United Kingdom. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| General Michael E. Ryan, Chief of Staff, USAF, Washington, D.C. | Eight (8) silver coins. Recd—January 4, 1999. Est. Value—$500. Turned in to GSA, October 11, 2001. | State President Guntis Ulmanis, President, Republic of Latvia. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| General John T. Sheridan, Commandant, Air Command and Staff College (ACSC), Maxwell Air Force Base, Alabama. | 18-carat gold and jade prayer beads Recd—April 27, 2001. Est. Value—$2,500. On official display at ACSC Maxwell Air Force Base, Alabama. | His Royal Highness Prince Bandar bin Sultan Bin Abdulaziz, Ambassador of Saudi Arabia to the United States. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Brigadier General Francis X. Taylor, Commander, Air Force Office of Special Investigations, (AFOSI) Bolling Air Force Base, D.C. | Silver dagger and sheath. Recd—April 27, 2001. Est. Value—$1,000. On official display at HQ AFOSI. | Embassy of Oman ..... | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Brigadier General Francis X. Taylor, Commander, AFOSI, Bolling Air Force Base, D.C. | Flat weave wool Kilim carpet. Recd—November 17, 2002. Est. Value—$850. On official display at HQ AFOSI Protocol lounge. | Mr. Turen Genc, Chief of Turkish National Police. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Mrs. Marilyn Wald, wife of Lt. General Charles F. Wald, Commander, USCENTAF, Shaw Air Force Base, South Carolina. | Stainless steel Concord Delirium ladies watch with silver dial and four Roman numeral markers Model #0304374. Est. Value—1,200. Pending turn-in to GSA. | Brigadier General Hamad bin Alibin Hamad Al-Ahiyan, Chief, Armed Forces of Qatar. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Mrs. Marilyn Wald, wife of Lt. General Charles F. Wald, Commander, USCENTAF, Shaw Air Force Base, South Carolina. | Gold bracelet. Recd—October 16, 2000. Est. Value—$950. Pending turn-in to GSA. | Brig Staff Pilot Khalid bin Abdullah Mubarak Al Buainneen, Commander, United Arab Emirates Air Force and Air Defense. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |
| Captain Joseph P. Wedding, Aide, d-Camp, 3 AF, RAF Mildenhall, United Kingdom. | Two uncarved elephant tusks, 15-inches tall. Recd—October 23, 2000. Est. Value—$1,000. Destroyed November 3, 2001. | Air Marshall Alfa, Chief of Staff, Nigerian Air Force. | Non-acceptance would have caused embarrassment to the donor & U.S. Government. |

AGENCY: FBI

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstance justifying acceptance |
|---|---|---|---|
| Wilford Rattigan, Legal Attache, Riyadh. | Winter Bisht (Formal Saudi Topcoat). Recd—10/01. Est. Value—$250.00. On Display. | United Arab Emirates ..... | Courtesy gift, received when conducting a Needs Assessment Review. |
| Wilford Rattigan, Legal Attache, Riyadh. | Summer Bisht (Formal Saudi Topcoat). Recd—10/01. Est. Value—$250.00. On Display. | United Arab Emirates ..... | Courtesy gift received when conducting a Needs Assessment Review. |
| Wilford Rattigan, Legal Attache, Riyadh. | Fortix Stainless Steel Watch. Recd—10/01. Est. Value—$500.00. On Display. | United Arab Emirates ..... | Courtesy gift received when conducting a Needs Assessment Review. |

AGENCY: UNITED STATES DEPARTMENT OF AGRICULTURE

[Report of Tangible Gifts—CY–2001]

| Name of title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location | Identify of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Ann M. Veneman, Secretary of Agriculture. | A Mexican sterling silver pitcher. Rectangular tapering body, with pressed Greek key base and top border, with monogram ''A.V.'' Angular handle. Marked: ''TERAL .925 Sterling Mexico.'' Weight 835.5 grams. Packing box marked: Schiavon, dal 1957 1957 firma l'argente'' and a label ''Specially Manufactured for Tera.1.'' Height 7¾″ and Width 5¾″; Depth 2¼″. *Date received:* September 6, 2001. *Appraised retail value:* $975. *Disposition*: In storeroom of the USDA Foreign Agricultural Service's Chief of Representation, Foreign Visitors and Protocol. An SF–120 will be prepared and the item will be turned-in to General Services Administration. Appraisal performed by John V. Lanterman, FASA (Fellow, American Society of Appraisers) and Barbara Shanley, Accredited Senior Appraiser on October 11, 2001. | Hon. Javier USABIAGA Arroyo, Mexican Secretary of Agriculture. | Non-acceptance would have caused embarrassment to the donor and U.S. Government. |

AGENCY: DEPARTMENT OF ENERGY

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Spencer Abraham, Secretary of Energy. | A sample of Arabian light crude oil from the Arab (D) reservoir in a crystal decanter and a sample of oil-rich rock from the Manifa reservoir in a wood presentation box with gold tone liner. Received—April 27, 2001. Estimated Value—$590. Reported to GSA February 21, 2001; pending transfer to GSA. | Ali I.—Naimi, Minister of Petroleum & Mineral Reservoirs, Kingdom of Saudi Arabia. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

## AGENCY: DEPARTMENT OF ENERGY—Continued

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Spencer Abraham, Secretary of Energy. | Crystal bowl. Received—December 11, 2001. Estimated Value—$370. Reported to GSA February 21, 2001; pending transfer to GSA. | Sheikh Saudi Nasser Al-Sabah, Ambassador of Kuwait. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

## AGENCY: SECURITIES AND EXCHANGE COMMISSION

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Wayne M. Carlin, Regional Director, Northeast Regional Office. | Plastic dish. Recd.—February 20, 2001. Unknown value. Sent to GSA for disposition. | People's Republic of China, China Securities Regulatory Commission. | Informational Meeting at NERO Gift to host. |
| Wayne M. Carlin, Regional Director, Northeast Regional Office. | Bound volume of People's Republic of China postage stamps. Recd.—February 20, 2001. Unknown value. Sent to GSA for disposition. | People's Republic of China, China Securities Regulatory Commission. | Informational Meeting at NERO Gift to host. |
| Wayne M. Carlin, Regional Director, Northeast Regional Office. | Framed glass plate. Recd.—February 26, 2001. Unknown value. Sent to GSA for disposition. | People's Republic of China, China Securities Regulatory Commission. | Informational Meeting at NERO Gift to host. |

## AGENCY: UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identify of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Carrie Dailey, Executive Office, USAID/Benin. | Gift: Gold jewelry. Date of acceptance: July 23, 2001. Estimated value: $494. Location: USAID/M/AS/CPD. | USAID/Benin's landlady, Ms. El Hadja Rachidatou Nourou Soule's daughter. | Attempts to decline acceptance were unsuccessful; further effort would have caused embarrassment to donor. |

## AGENCY: CENTRAL INTELLIGENCE AGENCY

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| George J. Tenet, Director, Central Intelligence. | Parquetry mother-of-pearl diorama, modern with a scene of the Last Supper above a nativity scene within the year 2000 H: 23½ inches; W: 15¾ inches; D: 3½ inches. Rec'd—12 June 2001. Est. value—$500. To be retained for official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| George J. Tenet, Director, Central Intelligence. | Parcel gilt and niello silver presentation sabre and sheath, modern. Elaborately decorate with foliage and arabesque reserves with chased decoration, in a walnut red velvet lined case. L: overall: 37½ inches. Rec'd—05 July 2001. Est. value—$750. To be retained for official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George J. Tenet, Director, Central Intelligence. | Cased pair of reproduction brass and polished steel inlaid walnut flint-lock presentation pistols, modern; together with four implements. L of pistols: 15 inches. Rec'd—04 October 2001. Est. value—$300. To be retained for official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George J. Tenet, Director, Central Intelligence. | Pair of unmarked yellow gold and diamond cufflinks, one market G. Sacco for Gerardo Sacco, modern, each set with four melee round faceted diamonds. Rec'd—05 November 2001. Est. value—$300. To be retained for official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George J. Tenet, Director, Central Intelligence. | Agate mounted silver kindjal, modern, in a blue velvet fitted case. L: 23½ inches Rec'd—27 November 2001. Est. value—$400.00. To be retained for official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George J. Tenet, Director, Central Intelligence. | Brass mounted wood presentation sabre, modern, in a fitted velvet lined case. L: 37 inches. Rec'd—21 December 2001. Est. value—$300. To be retained for official display. | 5 U.S.C. 7342(f)(4) ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| George J. Tenet, Director, Central Intelligence. | Engraved silver coffee pot, modern, typical form chased with bands of scrolling vines and flowers on a punch-work ground. H: 12½ inches; Weight: 55 oz. Rec'd—01 November 2001. Est. value—$500. To be retained for official display. | 5 U.S.C. 7342(F)(4) ..... | Non-acceptance would have caused embarrassment to donor and U.S. Government. |

AGENCY: UNITED STATES SENATE

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Mike DeWine, U.S. Senator ..... | Oil painting, 28 x 23, rural Central American village scene. Recd.—February 20, 2000. Est. Value—$900. Display in SR 148. | President Carlos Roberto Flores of Honduras. | Non-acceptance would have caused embarrassment to the donor and the U.S. |
| James M. Inhofe, U.S. Senator ..... | Algerian-made carpet 10′ x 6′. Recd.—July 23, 2001. Est. Value—Exceeds $100. Display in SR 449. | President of Algeria, H.E. Abdelaziz Bouteflika. | Non-acceptance would have caused embarrassment to the donor and the U.S. |

AGENCY: UNITED STATES SENATE—Continued

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Edward M. Kennedy, U.S. Senator | Statue of Cuchulainn (an Irish Folk Hero), Bronze, 12″ tall. Recd.—May 1, 2001. Est. Value—$108. Display in SR 315. | Prime Minister Bertie Ahern of Ireland. | Non-acceptance would have caused embarrassment to the donor and the U.S. |
| Edward M. Kennedy, U.S. Senator | Glass Plate, Arabic design, gold trim with blue painting and red and green outer border. Recd.—February 26, 2000. Est. Value—$150. Deposited with Secretary of Senate. | King Fahd of Saudi Arabia ..... | Non-acceptance would have caused embarrassment to the donor and the U.S. |
| Edward M. Kennedy, U.S. Senator | Square Plate, Arabic design, teal, red and blue. Recd.—February 26, 2001. Est. Value—$150. Deposited with Secretary of Senate. | King Abdullah of Jordan ..... | Non-acceptance would have caused embarrassment to the donor and the U.S. |
| Edward M. Kennedy, U.S. Senator | Vase, Recd.—June 16, 2000. Est. Value—$220. Display SR 324. | Former President of Taiwan, Lee Ten-Hoi. | Non-acceptance would have caused embarrassment to the donor and the U.S. |
| John F. Kerry, U.S. Senator ..... | Two Rosenthal China Plates. Recd.—January 26, 2001. Est. Value—Exceeds $100. Deposited with Secretary of Senate. | King Abdullah of Jordan ..... | Non-acceptance would have caused embarrassment to the donor and the U.S. |
| Bill Nelson, U.S. Senator ..... | Carpet, 120″ x 72″. Recd.—July 12, 2001. Est. Value—Exceeds $100. Display SH 716. | President of Algeria, H.E. Abdelaziz Bouteflika. | Non-acceptance would have caused embarrassment to the donor and the U.S. |
| Bill Nelson, U.S. Senator ..... | Carpet, 80″ x 48″. Recd.—April 14, 2001. Est. Value—Exceeds $100. Display SH 716. | President of Azerbaijan, Heyder Aliyer. | Non-acceptance would have caused embarrassment to the donor and the U.S. |
| John D. Rockefeller IV, U.S. Senator. | Framed print entitled ''Wealth and Good Fortune''. Recd.—August 10, 2001. Est. Value—Exceeds $100. Display in SH 531. | Premier Chun-Hsiung Chang, Republic of China. | Non-acceptance would have caused embarrassment to the donor and the U.S. |

AGENCY: UNITED STATES SENATE

[Report of Travel or Expenses of Travel]

| Name and title of person accepting travel expenses consistent with the interests of the U.S. Government | Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Ian Brzezinski, Professional Staff Member, Committee on Foreign Relations. | Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001. | Government of Poland ..... | No commercial transportation available within scheduled time frame. |
| Tom Daschle, U.S. Senator ..... | Transportation within Mexico via small military aircraft, November 17–18, 2001. | Government of Mexico ..... | No commercial transport available to accommodate meetings scheduled with Mexican officials. |
| Linda Daschle, Spouse of Senator | Transportation within Mexico via small military aircraft, November 17–18, 2001. | Government of Mexico ..... | No commercial transport available to accommodate meetings scheduled with Mexican officials. |
| Dr. John Eisold, Attending Physicain. | Transportation within Mexico via small military aircraft, November 17–18, 2001. | Government of Mexico ..... | No commercial transport available to accommodate meetings scheduled with Mexican offcials. |
| Nancy Ives, Communications Director, Office of Senator McCain. | Transportation and lodging within Thailand, April 19–22, 2001. | Thailand Ministry of Foreign Affairs. | Non-acceptance would cause host government embarrassment. |
| Sue Keenom, Director of Administration, Office of Senator Gordon Smith. | Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001. | Government of Poland ..... | No commercial transportation available within scheduled time frame. |
| Joab M. Lesesne, III, Chief of Staff, Senator Hollings. | Transportation including lodging and meals within Thailand, April 19–22, 2001. | Thailand Ministry of Foreign Affairs. | Non-acceptance would cause host government embarrassment. |

AGENCY: UNITED STATES SENATE—Continued

[Report of Travel or Expenses of Travel]

| Name and title of person accepting travel expenses consistent with the interests of the U.S. Government | Brief description of travel or expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Andrea LaRue, Counsel, Office of Senate Majority Leader. | Transportation within Mexico via small military aircraft, November 17–18, 2001. | Government of Mexico | No commercial transport available within scheduled time frame. |
| Denis McDonough, Foreign Policy Advisor, Office of Senate Majority Leader. | Transportation within Mexico via small military aircraft, November 17–18, 2001. | Government of Mexico | No commercial transport available within scheduled time frame. |
| Tiffany Smith, Congressional Fellow, Office of Senator Bob Graham. | Transportation within Chile, including lodging and meals, July 1–5, 2001. | Government of Chile | Official travel to meetings relating to U.S./Chile Free Trade issues. |
| Gordon Smith, U.S. Senator | Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001. | Government of Poland | No commercial transport available within scheduled time frame. |
| Sharon Smith, Spouse of Senator | Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001. | Government of Poland | No commercial transport avaialble within scheduled time frame. |
| George Voinovich, U.S. Senator | Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001. | Government of Poland | No commercial transport available within scheduled time frame. |
| Jane Voinovich, Spouse of Senator. | Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001. | Government of Poland | No commercial transport available within scheduled time frame. |
| Sally Walsh, Director, Interparliamentary Services. | Transportation within Poland, Warsaw to Lublin, and return, June 2, 2001. | Government of Poland | No commercial transport available within scheduled time frame. |
| Sally Walsh, Director, Interparliamentary Services. | Transportation within Mexico via small military aircraft, November 17–18, 2001. | Government of Mexico | No commercial transport available to accommodate meetings scheduled with Mexican officials. |

AGENCY: U.S. HOUSE OF REPRESENTATIVES

[Report of Tangible Gifts]

| Name and title of person accepting the gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Barney Frank, Member of Congress. | Oil painting by Maria Tomás. Received April 19, 2001. Value in excess of $1,000. On display in Rep. Frank's Washington Office. | President Carlos César, President of the Autonomous Regional Government of the Azores (Portugal). | Non-acceptance would have caused embarrassment to donor. |

AGENCY: U.S. HOUSE OF REPRESENTATIVES

[Report of Travel or Expenses of Travel]

| Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government | Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Bob Barr, Member of Congress | Lodging and meals in Qatar for Member and spouse, April 8–11, 2001. | University of Qatar | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| David E. Bonoir, Member of Congress. | Helicopter transport within Pakistan (Islamabad to Muzaffarabad to Islamabad) April 21, 2000. | Pakistan | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Meredith Broadbent, Committee on Ways and Means. | Meals, lodging and travel in Costa Rica, May 27–30, 2001. | Costa Rica | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Edward A. Bruley, Rep. Bonoir | Helicopter transport within Pakistan (Islamabad to Muzaffarabad to Islamabad) April 21, 2000. | Pakistan | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

[Report of Travel or Expenses of Travel]

| Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government | Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Vergil Cabasco, Rep. Dunn ..... | Lodging, meals and transportation in Thailand, April 19–April 22, 2001. | Thailand Ministry of Foreign Affairs. | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Robert J. Castro, Rep. Shaw ..... | Lodging, meals and land transportation in Thailand, April 19–April 22, 2001. | Thailand Ministry of Foreign Affairs. | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Philip Crane, Member of Congress | Meals, lodging and travel in Costa Rica, for Member and spouse, May 27–30, 2001. | Costa Rica ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Steve Elmendorf, Office of the Democratic Leader. | Transportation within Mexico (Mexico City to Leon to Mexico City), plus meal, November 17, 2001. | Mexico ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Richard A. Gephardt, Minority Leader. | Transportation within Mexico (Mexico City to Leon to Mexico City), plus meal, for Minority Leader and spouse, November 17, 2001. | Mexico ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Lee R. Godown, Rep. Sanchez ..... | Lodging, meals, in-country travel in China, April 9–13, 2001. | Peoples' Republic of China (Chinese Peoples' Institute of Foreign Affairs). | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Michael M. Honda, Member of Congress. | Transportation, meals and admission in China, for Member and spouse, August 4–12, 2001. | Peoples' Republic of China (Chinese Peoples' Institute of Foreign Affairs). | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Mannik Khatchatrian, Rep. Schiff .. | Helicopter ride and tour from Yerevan to Naorno-Karabakh, August 22, 2001. | Armenia ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Ray LaHood, Member of Congress | Lodging in Lebanon, for Member and spouse, May 26–June 3, 2000. | Lebanon ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Audrey Lesesne, Rep. McIntyre .... | Lodging, transportation and meals in Thailand, April 19–22, 2001. | Thailand Ministry of Foreign Affairs. | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Meri Maben, Rep. Honda ..... | Transportation, meals and admission in China, August 4–12, 2001. | Peoples' Republic of China (Chinese Peoples' Institute of Foreign Affairs). | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Moses Mercado, Office of the Democratic Leader. | Transportation within Mexico (Mexico City to Puebla), November 17, 2001. | Mexico ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Donna Pignatelli, Rep. Brown ..... | Travel and meals in Thailand, April 19–22, 2001. | Thailand Ministry of Foreign Affairs. | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Nick J. Rahall, Member of Congress. | Lodging and meals in the United Arab Emirates, April 5–8, 2001. | United Arab Emirates ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Nick J. Rahall, Member of Congress. | Lodging and meals in Qatar, April 8–11, 2001. | University of Qatar ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Andrea Salinas, Rep. Stark ..... | Lodging and meals for staff member and spouse, August 11–August 17, 2001. | Chilean Government ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Loretta Sanchez, Member of Congress. | Lodging, food, in-county travel in China, April 9–April 13, 2001. | Peoples' Republic of China (Chinese People's Institute of Foreign Affairs). | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Adam B. Schiff, Member of Congress. | Helicopter and ground tour from Yerevan to Nagorno-Karabakh, August 22, 2001. | Armenia ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Brad Smith, Rep. Dreier ..... | Lodging, food and travel within Bangkok, April 19–22, 2001. | Thailand Ministry of Foreign Affairs. | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Gene Smith, Rep. Berman ..... | Lodging, food and travel within Bangkok, April 19–22, 2001. | Thailand Ministry of Foreign Affairs. | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| John E. Sununu, Member of Congress. | Lodging and meals, April 8–11, 2001. | University of Qatar ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Michele Taulton, Rep. Crane ..... | Lodging, meals and travel in Costa Rica, May 27–30, 2001. | Costa Rica ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |
| Lisa Vogt, Rep. Armey ..... | Lodging, ground transportation, food and interpreter in Chile, August 11–14, 2001. | Government of Chile ..... | Authorized by 5 U.S.C. § 7342(c)(1)(B)(ii). |

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

[Report of Travel or Expenses of Travel]

| Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government | Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Eric Cantor Member of Congress .. | Certified antique glass bowl in a personally engraved display case. Received December 12, 2001. Value in excess of $260. On display in Rep. Cantor's Washington Office. | Minister of Tourism of Israel ..... | Non-acceptance would have caused embarrassment to donor. |

AGENCY: DEPARTMENT OF COMMERCE

[Report of Tangible Gifts]

| Name and title of person accepting gift on behalf of the U.S. Government | Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location | Identity of foreign donor and government | Circumstances justifying acceptance |
|---|---|---|---|
| Donald L. Evans, Secretary of Commerce. | Department of Commerce, Secretary's Office. Rec'd—November 5, 2001. Est. Value—$1750. 7′4″ x 9′6″ Oriental Rug. | Abdelaziz Bouteflika, President, Algeria. | Non-acceptance would have caused embarrassment to donor. |
| Donald L. Evans, Secretary of Commerce. | Department of Commerce, Secretary's Office. Rec'd—July 12, 2001. Est. Value—$1200. 114′½″″ x 88″″ Oriental Rug. | Abdelaziz Bouteflika, President, Algeria. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald L. Evans, Secretary of Commerce. | Café Pushkin, Moscow, Russia. Rec'd—July 27, 2001. Est. value—$1200. Painting—''Winter Scene'' by A. Yegorov, Circa 1910. | German Gref, Minister, Economic Development and Trade, Russia. | Non-acceptance would have caused embarrassment to donor and U.S. Government. |
| Donald L. Evans, Secretary of Commerce. | Department of Commerce, Secretary's Office. Rec'd—August 14, 2001. Est. Value—Pending. Ceremonial dagger—Khanjar. | Yusuf bin Alawi bin Abdullah, Minister, Foreign Affairs Sultanate of Oman. | Non-acceptance would have caused embarrassment to donor. |
| Donald L. Evans, Secretary of Commerce. | Department of Commerce, Secretary's Office. Rec'd—September 5, 2001. Est. Value—Pending. Obsidian Statue, 6″. | Vicente Fox Quesada, President, Mexico. | Non-acceptance would have caused embarrassment to donor. |

[FR Doc. 02–16498 Filed 7–19–02; 8:45 am]

**BILLING CODE 4710–20–M**

Federal Register

**Monday,**
**July 22, 2002**

## Part IV

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 39**
**Airworthiness Directives; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2000–8460; Amdt. No. 39–9474]**

**RIN 2120–AA64**

## Airworthiness Directives

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

**ACTION:** Final rule.

**SUMMARY:** This final rule incorporates several standard provisions previously included in most airworthiness directives into the Code of Federal Regulations. FAA will no longer include these provisions in individual airworthiness directives. FAA is taking this action to standardize the way we write airworthiness directives. This action will enhance aviation safety by making it easier for users to focus on specific safety concerns addressed in airworthiness directives.

**DATES:** Effective August 21, 2002.

**FOR FURTHER INFORMATION CONTACT:** Donald Byrne, Assistant Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 267–3073.

**SUPPLEMENTARY INFORMATION:**

### Availability of Rulemaking Documents

You can get an electronic copy of this document through the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html* or from the Department of Transportation's electronic Docket Management System (DMS) web page on the Internet at *http://dms.dot.gov.* Use the search function to search for Docket Number 8460. This document will be the last item in the list of items under that number. 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. Ask for the final rule for Docket Number 8460.

### Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests 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 SBREFA at our Web site, *http://www.faa.gov/avr/arm/sbrefa.htm,* or e-mail us at *9-AWA-SBREFA@faa.gov.*

### Background

*1. New Provisions*

FAA is revising part 39 of Title 14 of the Code of Federal Regulations (14 CFR) by adding several provisions currently found in airworthiness directives (ADs). This action will allow us to omit those provisions from individual ADs. Omitting this language from ADs will place the focus of ADs on the unsafe condition that created the need for the directive. Many operators have indicated that this boilerplate language imposed a burden on the reader without contributing to aviation safety. The standard provisions currently found in ADs make it hard for the reader to focus on the safety aspects of the AD. Therefore, FAA is moving several of these standard provisions to part 39.

Specifically, FAA is adding to part 39 the language explaining that ADs apply even if products have been modified, altered, or repaired in the area addressed by the directive. FAA also is adding the language about the use of special flight permits if operators are not able to move their aircraft to a repair facility within the time limits imposed by the AD. Further, the new part 39 will contain procedures for asking FAA to approve alternative methods of compliance with the AD. Finally, FAA is adding the language that requires operators to comply with the requirements of an AD when the AD and a service document referenced in an AD conflict.

*2. Clearer Regulatory Format*

In addition to moving certain provisions currently found in individual ADs to part 39, FAA wrote this regulation in plain language. We reorganized and reworded the regulation using plain language techniques. Plain language elements in the proposal include—

a. Section headings in the form of questions to help direct the readers to specific material they need;

b. Personal pronouns to reduce passive voice and draw readers into the writing; and

c. Active verbs to make clear who is responsible for what actions.

*3. Related Activity*

As part of FAA's effort to improve the way we issue ADs, we will start to issue them in a new, streamlined format. Simpler ADs will appear as charts, with all regulatory information contained within the chart. More complex ADs will make greater use of tables to present complex materials in a clearer manner.

*4. Discussion of Comments*

FAA issued a notice of proposed rulemaking (NPRM), proposing changes to part 39, as described previously (66 FR 3382; January 12, 2001). FAA received fifteen comments on the proposal from individuals, representatives of industry associations, and businesses who participate in the aviation industry.

*General comments:* Several commenters generally supported the proposal. They stated that they support the concept of writing ADs in a clear style. They agree that eliminating the standard language from most ADs will help readers focus on the safety information specific to each AD.

One commenter generally objected to the proposal and several commenters, while supporting the proposal in general, objected to the question and answer format. They stated that it was more difficult to find material with question headings. One commenter stated that ''question headings fail to communicate a clear standard.''

We find that question headings help guide readers through the document, especially in non-technical regulations such as this one; therefore, FAA will continue to consider the use of question headings. However, we do agree that use of question headings is not always appropriate. This is particularly true of standard sections at the beginning of many regulations, such as the purpose of the regulation and definitions used in the regulation. On the other hand, switching back and forth between two heading types throughout a regulation may be distracting and confusing to some readers. Accordingly, we have retained the question headings in most of this regulation, but have used the more traditional statement style for the first two sections of the final rule, ''Purpose of the Regulation'' and ''Definition of Airworthiness Directives.''

We do not agree with the comment that question headings fail to provide a clear standard. Standards of a regulation are within the text of each section, not in the heading. Traditional headings in statement form such as ''applications'' and ''general'' were never intended to provide a ''clear standard'' to the reader, and neither are question headings.

Several commenters stated they found pronouns confusing. FAA finds that

pronouns help readers relate to a document. However, we agree that it is critical that the referent for each pronoun be clear, and we have tried to achieve that in this final rule.

Several commenters cautioned that if we eliminate the boilerplate notes from specific ADs, we should mention this new part 39 in the preamble to each AD. While we note that any operator of aircraft regulated by FAA has an obligation to be familiar with FAA regulations, we will refer to part 39 in the preamble of each AD to alert operators to these provisions.

Two commenters stated the rule does nothing to enhance aviation safety. FAA disagrees. As we stated above, we find that this action will allow readers of ADs to focus on the safety related material. We find that clear communication is a safety issue, and this final rule will clarify the provisions of ADs, thereby enhancing aviation safety. Several commenters agreed that removing the boilerplate will allow readers to focus on the safety issues.

Several commenters indicated that FAA should not introduce new regulatory requirements in part 39 in this rulemaking action. The only example that commenters gave was the change to § 39.17, which tells people where to send requests for FAA approval of alternative methods of complying with ADs. We discuss this issue in the section-by-section analysis below. FAA notes that this rulemaking action does not introduce any new regulatory requirements. We are simply moving provisions currently found in ADs to part 39.

Several commenters stated that some headings did not adequately cover the material in the following section, or that FAA needed additional material clarifying the proposed provisions. We agree with several of the comments; therefore, we added new sections to the final rule, and renumbered succeeding sections accordingly.

*Section-by-Section Discussion of Comments*

Section 39.1 Purpose of This Regulation

This section explains that part 39 establishes the regulatory basis for FAA's airworthiness directives. This would replace similar material found currently in part 39.

One commenter objected to the term ''set up'' in the proposal, and suggested alternative language. While we have not used the commenter's suggested language, which was much longer, we agree the term ''set up'' may not be appropriate for a regulation. We have reworded this section to provide a more precise description of the role of part 39.

Section 39.3 Definition of Airworthiness Directives

This section explains that ADs are legally enforceable rules that apply toaircraft, aircraft engines, propellers, and appliances. We refer to these items as ''products.'' This definition is similar to that in the prior version of §§ 39.1 and 39.3.

Two commenters suggested that we either define products, which they note is defined only in 14 CFR part 21, or eliminate the term from this section. The prior version of part 39 included the same definition of ''product,'' that is, ''aircraft, aircraft engine, propellers, or appliances.'' We have decided not to change this definition. The definition of ''product'' in part 21 is similar, but does not include the term ''appliance.'' We will continue to issue ADs applicable to ''appliances.'' To clarify that we will use this term in this part, we have revised the wording in this section to state that ADs cover the following products: aircraft, aircraft engines, propellers, and appliances.

Proposed § 39.3 stated the conditions under which FAA will issue an AD. We have moved this provision into a new section in the final rule, § 39.5. See the discussion of that section below. One commenter suggested the heading of this section did not capture the entire contents of the section. According to the commenter, the section also refers to the conditions that must be present when FAA issues an AD. We agree with the commenter; therefore, we have separated this material into two sections.

Section 39.5 (New Section in Final Rule) When Does FAA Issue Airworthiness Directives?

This is a new section in the final rule. This material, which is similar to that found in current § 39.1, was in proposed § 39.3. The section describes the conditions under which FAA would issue an AD. FAA issues ADs when we find that an unsafe condition exists in a product and the condition is likely to exist or develop in other products of the same type design. We have renumbered subsequent sections accordingly to accommodate this new section.

One commenter stated that the language in this section could be interpreted to exclude issuing an AD against parts. FAA does not intend this provision to change AD applicability to parts. Except for ''appliances,'' which are included in the definition of ''products,'' FAA has not issued ADs that apply to ''parts,'' independently of the products on which they are installed. Rather, if we find an unsafe condition is caused by a particular part, we issue an AD against the product or products on which the part is installed. For ease of identifying those products, we may specify the part in the applicability provision, ''as installed on'' particular products. If we are not certain of all the products on which the part is installed, we may identify the products we do know about, but indicate that others may also be affected. In all of these cases, however, the AD applies to the products on which these parts are installed, rather than to the parts themselves, simply because parts that are not installed on products do not create an unsafe condition. This new version of part 39 will not change this practice.

Section 39.7 (Proposed § 39.5) Who Must Comply With Airworthiness Directives?

This section clarifies that anyone operating a product listed in an AD must comply with the AD. Proposed § 39.5 also specified that each flight taken without complying with the AD is a separate violation. This material is similar to the prior version of § 39.3.

One commenter noted that the heading of this section does not capture the entire content of the section because the section also addresses the consequences of non-compliance. FAA agrees. Many readers will also want to find information about compliance. Therefore, we have separated this information into a new section, § 39.9, for easy reference.

In considering this comment, we recognized that prior version of § 39.3, which proposed § 39.5 was intended to replace, does not state who must comply with ADs. Rather, it states that no person may operate a product that is subject to an AD except in accordance with the requirements of that AD. This is a statement of the legal effect of failing to comply with ADs. The question of who must accomplish the actions specified in an AD is actually answered by other rules. For example, many ADs require maintenance actions. Other regulations, including those in 14 CFR parts 65, 121, and 145, identify who is authorized to do maintenance. Further, in the past when FAA took enforcement action relating to failures to comply with an AD, we cited § 39.3 as the regulation that was violated, not the AD itself.

To prevent confusion and to be consistent with past practice, we are revising the question heading for § 39.7 to state, ''What is the legal effect of failing to comply with an AD?'' We have

changed the section to read, ''It is a violation of this section for anyone to operate a product when it is not in compliance with an AD that applies to it.''

We are re-writing § 39.9 to refer to § 39.7, which is the rule that operators will violate if they fail to operate or use a product without complying with an AD that applies to that product.

Section 39.9 (New Section in Final Rule) What If I operate or Use a Product That Does Not Meet the Requirements of an Airworthiness Directive?

This section specifies that if the requirements of an airworthiness directive have not been met, then each time you operate the aircraft or use the product, you violate § 39.7. In the proposal, this material was in §§ 39.3 and 39.7. We made this change in response to a comment that the title of proposed § 39.5 did not adequately cover this issue.

Section 39.11 (Proposed 39.7) What Actions Do Airworthiness Directives Require?

This section identifies what actions ADs can require. This rule is similar to the prior version of § 39.11. As under the former provisions in part 39, FAA intends to retain broad authority to require whatever types of corrective actions we determine to be most effective in addressing identified unsafe conditions. This includes inspections, repairs, modifications, operating limitations, airworthiness limitations, and maintenance program requirements. We received no comments on this section, and adopt it as proposed.

Section 39.13 Are Airworthiness Directives Part of the Code of Federal Regulations?

This section specifies that ADs are amendments to § 39.13. However, ADs are not codified in the annual edition of the Code of Federal Regulations. As with other regulations, ADs are published in full in the **Federal Register**.

One commenter stated this language is not needed in the rule, and recommended we move it to the preamble. While this language may appear to be just informative and not regulatory, the Office of the Federal Register requires us to include it in part 39. This language has the legal effect of including ADs in the Code of Federal Regulations by publishing them in the **Federal Register**, without codifying them in the annual edition of the Code. Therefore, we adopt this section as proposed.

Section 39.15 Does an Airworthiness Directive Apply If the Product Has Been Changed?

This section specifies that ADs apply to products even if they have been modified, altered, or repaired in the area addressed by the AD. Proposed § 39.15 also specified what to do if the change prevents complying with the AD.

One commenter suggested that the heading as proposed did not cover all the material in the section. The section not only specified that ADs apply to products even if they have been modified, altered, or repaired, but also included material on what to do if products had been changed in a way that affected an operator's ability to comply with an AD. We agree with the commenter. Therefore, we have moved that second provision into a new section, § 39.17. We discuss this issue and comments received on proposed § 39.15 in the discussion of new § 39.17.

Several commenters expressed confusion about the meaning of the first two sentences of this section as proposed. We agree that the proposed wording was confusing, and have accepted language suggested by one of the commenters. This change in the final rule language is consistent with both past practice and with our intent in the NPRM.

Another commenter suggested that we define product, series, model, and individual aircraft. As discussed previously, we define ''product'' in § 39.3. We do not agree that the terms ''series, ''model,'' and ''individual aircraft'' need a regulatory definition. An aircraft ''model'' typically refers to all aircraft covered by a particular type certificate, such as ''Boeing Model 747 airplanes.'' A ''series'' typically refers to a specific subset of the model that is identified on the type certificate data sheet for the model, such as ''Boeing Model 747–400 series airplanes.'' In addition, the applicability provisions of ADs frequently refer to individual aircraft, as identified by unique line numbers or serial numbers.

Section 39.17 (New Section in Final Rule) What Must I Do If a Change in a Product Affects My Ability To Accomplish the Actions Required in an Airworthiness Directive?

This new section contains material we proposed in § 39.15. We have moved it into a separate section in response to comments. It specifies that if a change in a product affects your ability to comply with the AD, you must ask FAA's permission to use an alternative method of compliance, and your request must *either show that the change eliminated the unsafe condition or* include the specific actions you propose. Although this material is new to part 39, it currently appears as a note in individual ADs.

Several commenters suggested that we retain current language for ''alternative method of compliance'' and that we use this language consistently. We agree with this suggestion.

One commenter suggested that we change the first sentence to say ''that'' change rather than ''a'' change. We have accepted this suggestion. The same commenter further suggested that we clarify this provision by stating that it applies to cases where the change alters existing approved actions. We do not agree. As stated in the NPRM regarding this provision, ''This material is new to part 39 but currently appears in most individual ADs.'' This section simply explains the legal effect of the applicability provision of each AD, and this effect is unchanged by the adoption of this final rule. In the past, as in the future, all products identified in the applicability provision of an AD are subject to the AD, and operators must either comply with the provisions of the AD or request approval for an alternative method of compliance. No change to the final rule is necessary.

One commenter suggested repeating the language about products that are ''modified, altered or repaired * * *'' We find that the term ''change'' adequately covers these three concepts and therefore this more detailed language is not necessary.

Another commenter noted that if a prior change has made the aircraft safe, FAA should not ground the aircraft pending completion of actions required by an AD. The comment stated this is an ''additional requirement'' on safely modified aircraft and FAA should not impose such requirements.

FAA does not agree. ADs apply to a specific product, even if the product has been changed. We cannot tell whether a change satisfies the safety concern until the operator demonstrates that to us. If the operator demonstrated to FAA that the change satisfied the safety concern, we may approve the change as an alternative method of compliance.

One of the reasons why ADs have become so complex is that FAA has tried to address all configuration variations. However, we cannot cover all possible changes under an AD. We issue ADs to address the main configurations approved under type certificates or, in some cases, under supplemental type certificates. If operators have made additional changes, they are responsible for making

their aircraft airworthy and getting the necessary approvals to do so.

Similarly, two commenters questioned whether FAA should make a blanket statement that ADs apply to changed products, since the situation may be very complex. One commenter noted,

> It may not be advisable to automatically make the statement the airworthiness directive applies to changed products. This may take away some needed considerations of affected configurations during the formulation of the AD. By this statement, I am saying that there may be a propensity to think the responsibility of consideration of changed configurations can just be thrown to the owner/operator. There are some very complex changes to products on airplanes that cannot be reliably delegated to field operations FAA and maintenance personnel. Those complex changes are the very reasons for the omission of the applicability statement to changed products referenced in the Proposed Rule as having historically occurred on airworthiness directive's [sic]. It is frequently necessary to develop airworthiness directive's [sic] that adequately cover known changes to airplanes. Having this automatic responsibility statement may well promote a lack of effort in properly creating the airworthiness directive's [sic] needed to cover various configurations.

Presumably, the purpose of an operator's alternative method of compliance would be to avoid having to undertake the actions required by an AD. If the operator of a product that has been modified, altered, or repaired can show that the change makes the aircraft safe, FAA will approve the new configuration as an alternative method of compliance and the operator would not have to take the actions specified in the AD. This is not a new requirement. All products identified in the applicability provision of an AD have always been subject to the directive. Originally, we began including this note in ADs because some operators had taken the legally incorrect position that, because they had changed their aircraft, they did not have to comply.

In the final rule, we have moved this provision into its own section. We have used the term ''alternative method of compliance'' rather than a similar term used in the proposal.

Section 39.19 (Proposed § 39.17) May I Address the Unsafe Condition in a Way Other Than That Set Out in the Airworthiness Directive?

This section allows anyone to propose to FAA an alternative method of compliance, including proposals to change the amount of time given to comply with an AD, as long as the proposal provides an acceptable level of safety. This section explains how to ask FAA to approve a proposed alternative. This material is new to part 39 but currently appears in most individual ADs.

One commenter noted that sending copies to ''assigned FAA principal or aviation safety inspector'' differs from the current process of sending requests for alternative methods of compliance to FAA. Another commenter suggested the method specified in the proposal adds a new burden to operators. We have changed the language in the final rule to clarify that operators who do not have principal inspectors should send their requests directly to the FAA manager responsible for the AD for which they seek approval of an alternative method of compliance. We have also changed the language to allow operators to send a copy of their request simultaneously to the principal inspector and the manager, rather than requiring it. Since the final rule language does not require sending copies to two offices at once, there should be no additional burden imposed by the rule. However, if operators want to send copies to both the inspector and the manager at the same time to expedite the process or for some other reason, the final rule language allows them to do so. Operators can work with their principal inspector and manager to determine which works best for each case.

We have also added language authorizing FAA to designate an alternative process for submitting requests should the need arise. This flexibility accommodates particular unusual cases or improved processing of these requests, such as increased use of electronic transmissions. We have deleted the reference to Safety Inspectors and instead use the more specific term Principal Inspector.

Several commenters stated that FAA does not always designate managers as contact points for approval of an alternative method of compliance, and suggested that we use a more general term. We are not aware of any cases in which we designate someone other than a manager as a contact for approval of an alternative method of compliance. While some managers may have delegated that function to staff, the manager remains responsible for responding to the requests. Therefore we disagree with this comment.

Two commenters suggested that FAA indicate what standards we will use in reviewing requests for alternative methods of compliance. Further, they suggested that we indicate we will grant the request if the applicant shows the proposal would provide a level of safety at least equal to that provided by the AD. Given the range of unsafe conditions and possible alternative methods, FAA does not find it appropriate that we provide specific standards. We already state that we will approve these requests if they provide an acceptable level of safety. We are not arbitrary in our review of proposals for alternative methods of compliance, and have always approved them if they provide an acceptable level of safety. If FAA determines a proposed alternative is ''acceptable'' we will approve it, even if it may not be technically ''equivalent'' or ''at least equal to'' the method specified in the AD. Thus, the AD itself specifies the standard for approving an alternative method of compliance.

Several commenters stated FAA has previously approved alternative methods of compliance through other regulatory provisions, specifically 14 CFR 21.305(d) and 43.13(c), as well as 14 CFR part 11. The commenters recommend that FAA should continue this practice. This new version of part 39 will not change or eliminate any current bases for FAA's approval of alternative methods of compliance. However, we do not find that we have used these other authorities as the basis for approval. Approvals we have granted under § 21.305(d) or § 43.13(c) do not affect in any way an operator's obligation to either follow the requirements of an AD or get approval for an alternative method of compliance under part 39.

Section 39.21 (Proposed § 39.19) Where Can I Get Information About FAA-Approved Alternative Methods of Compliance?

This section informs you where to get information about alternative methods of compliance with ADs that FAA has already approved for other certificate holders. This material is new to part 39 but currently appears in most individual ADs.

Several commenters stated that if FAA's language means we will make alternative methods of compliance public when they are approved, FAA would be making proprietary information publicly available in violation of 18 U.S.C. 1905.

We derived this new paragraph in part 39 from a provision used in ADs for many years. By providing information about FAA-approved alternative methods of compliance, FAA does not reveal proprietary information; we simply identify whether we have approved alternative methods of compliance with a particular directive. We handle requests for further information regarding the content or substance of the alternative method of compliance under the Freedom of

Information Act, which provides an exception from disclosure for proprietary information.

Section 39.23 (Proposed § 39.21) May I Fly My Aircraft to a Repair Facility To Do the Work Required by an Airworthiness Directive?

This section explains that if you do not already have authority in your approved maintenance program to fly your aircraft to a repair facility, FAA may issue you a special flight permit, sometimes called a ''ferry permit,'' allowing you to fly your aircraft to a place where you can comply with the AD. This material is new to part 39 but currently appears in most individual ADs. Moving this provision to part 39 does not mean that you have authority under previously issued ADs to fly your aircraft to a repair facility.

Since we will allow you to move an aircraft only if it is safe to do so, this section also provides that FAA may add special requirements for flying a specific product to a repair facility to ensure aviation safety. Furthermore, FAA may specify in particular ADs that we will not issue special flight permits for products covered by that particular directive. FAA may take this position when the safety issue addressed by the AD is so serious that moving an aircraft to a repair facility would create an unacceptable safety risk. We may also decline to issue special flight permits in individual cases because of the condition of a specific aircraft.

Several commenters raised the issue of ''continuing'' authority to fly aircraft to a repair facility. We agree this was not specified in the proposed rule language, and have added language clarifying this in the final version of this section.

One commenter stated that FAA should explain that the local Flight Standards District Office, not the Office where the aircraft is based, issues special flight permits. We have incorporated the commenter's suggestions by adding reference to the local office to the final rule.

Several commenters suggested that we reference requirements in other parts of FAA's regulations concerning how to get a special flight permit. FAA agrees with this comment; therefore, we have added a new section, § 39.25, to the final rule.

Section 39.25 (New Section in Final Rule) How Do I Get a Special Flight Permit?

This section specifies that you can obtain a special flight permit under the provisions of 14 CFR 21.197 and 21.199. We added this section to the final rule in response to comments on proposed § 39.21 (final rule § 39.23) requesting that we address the requirements for obtaining special flight permits.

Section 39.27 (Proposed § 39.25) What Do I Do If the Airworthiness Directive Conflicts With the Service Document on Which It Is Based?

This section clarifies that in the case of conflicts between an AD and a service document, the AD prevails. This material is new to part 39 but currently appears in some ADs.

One commenter suggested that we change the reference to service bulletins to some broader term because sometimes ADs refer to other technical data besides service bulletins. FAA agrees with this comment and has changed the final rule language to reference ''service documents.''

Finally, one commenter suggested that FAA make available to the public any service bulletin incorporated by reference in an AD. We include a statement in every AD that service documents are available for viewing at FAA. To get your own copy, you must obtain it from the publisher.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements 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 International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

**Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

For regulations with an expected minimal impact, however, the analyses specified above are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If we determine that the expected impact is so minimal that the proposal does not warrant a full Evaluation, we include a statement to that effect and the basis for it in proposed regulation.

This final rule simply moves existing provisions from individual Airworthiness Directives (ADs) into part 39. This action streamlines individual Ads, which is expected to improve the focus of the safety issued addressed in the AD. This final rule imposes no new requirements. No comments were received disputing the facts that the action streamlines individual ADs and imposes no new requirements.

In analyzing this final rule, FAA has determined the rule has benefits which justify the costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in the Department of Transportation Regulatory Policies and Procedures. As the expected impact of this rule will have minimal cost, if any, a full regulatory evaluation is not warranted, and FAA did not prepare one.

Additionally, FAA certifies the rule will not have a significant impact on a substantial number of small entities, has no effect on barriers to international trade, and does not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational

requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

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

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

This action simply moves existing provisions from individual airworthiness directives into part 39. As a result, the cost is expected to be minimal. FAA did not receive any comments disagreeing with the assessment of minimal cost. Consequently, FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

**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, 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.

FAA has accordingly assessed the potential effect of this final rule to be minimal and therefore determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

**Unfunded Mandates Assessment**

The Unfunded Mandates Reform Act of 1995 (the Act), is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

**Executive Order 3132, Federalism**

FAA analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We determined that this final rule, therefore, does not have federalism implications.

**Environmental Analysis**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

**Energy Impact**

FAA has assessed the energy impact of the final rule under the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

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

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**The Amendment**

In consideration of the above, the Federal Aviation Administration revises part 39 of Title 14, Code of Federal Regulations, to read as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

Sec.

39.1 Purpose of this regulation.
39.3 Definition of airworthiness directives.
39.5 When does FAA issue airworthiness directives?
39.7 What is the legal effect of failing to comply with an airworthiness directive?
39.9 What if I operate an aircraft or use a product that does not meet the requirements of an airworthiness directive?
39.11 What actions do airworthiness directives require?
39.13 Are airworthiness directives part of the Code of Federal Regulations?
39.15 Does an airworthiness directive apply if the product has been changed?
39.17 What must I do if a change in a product affects my ability to accomplish the actions required in an airworthiness directive?
39.19 May I address the unsafe condition in a way other than that set out in the airworthiness directive?
39.21 Where can I get information about FAA-approved alternative methods of compliance?
39.23 May I fly my aircraft to a repair facility to do the work required by an airworthiness directive?
39.25 How do I get a special flight permit?
39.27 What do I do if the airworthiness directive conflicts with the service document on which it is based?

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

### § 39.1 Purpose of this regulation.

The regulations in this part provide a legal framework for FAA's system of Airworthiness Directives.

### § 39.3 Definition of airworthiness directives.

FAA's airworthiness directives are legally enforceable rules that apply to the following products: aircraft, aircraft engines, propellers, and appliances.

### § 39.5 When does FAA issue airworthiness directives?

FAA issues an airworthiness directive addressing a product when we find that:

(a) An unsafe condition exists in the product; and

(b) The condition is likely to exist or develop in other products of the same type design.

### § 39.7 What is the legal effect of failing to comply with an airworthiness directive?

Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.

### § 39.9 What if I operate an aircraft or use a product that does not meet the requirements of an airworthiness directive?

If the requirements of an airworthiness directive have not been met, you violate § 39.7 each time you operate the aircraft or use the product.

### § 39.11 What actions do airworthiness directives require?

Airworthiness directives specify inspections you must carry out, conditions and limitations you must comply with, and any actions you must take to resolve an unsafe condition.

**§ 39.13 Are airworthiness directives part of the Code of Federal Regulations?**

Yes, airworthiness directives are part of the Code of Federal Regulations, but they are not codified in the annual edition. FAA publishes airworthiness directives in full in the **Federal Register** as amendments to § 39.13.

**§ 39.15 Does an airworthiness directive apply if the product has been changed?**

Yes, an airworthiness directive applies to each product identified in the airworthiness directive, even if an individual product has been changed by modifying, altering, or repairing it in the area addressed by the airworthiness directive.

**§ 39.17 What must I do if a change in a product affects my ability to accomplish the actions required in an airworthiness directive?**

If a change in a product affects your ability to accomplish the actions required by the airworthiness directive in any way, you must request FAA approval of an alternative method of compliance. Unless you can show the change eliminated the unsafe condition, your request should include the specific actions that you propose to address the unsafe condition. Submit your request in the manner described in § 39.19.

**§ 39.19 May I address the unsafe condition in a way other than that set out in the airworthiness directive?**

Yes, anyone may propose to FAA an alternative method of compliance or a change in the compliance time, if the proposal provides an acceptable level of safety. Unless FAA authorizes otherwise, send your proposal to your principal inspector. Include the specific actions you are proposing to address the unsafe condition. The principal inspector may add comments and will send your request to the manager of the office identified in the airworthiness directive (manager). You may send a copy to the manager at the same time you send it to the principal inspector. If you do not have a principal inspector send your proposal directly to the manager. You may use the alternative you propose only if the manager approves it.

**§ 39.21 Where can I get information about FAA-approved alternative methods of compliance?**

Each airworthiness directive identifies the office responsible for approving alternative methods of compliance. That office can provide information about alternatives it has already approved.

**§ 39.23 May I fly my aircraft to a repair facility to do the work required by an airworthiness directive?**

Yes, the operations specifications giving some operators authority to operate include a provision that allow them to fly their aircraft to a repair facility to do the work required by an airworthiness directive. If you do not have this authority, the local Flight Standards District Office of FAA may issue you a special flight permit unless the airworthiness directive states otherwise. To ensure aviation safety, FAA may add special requirements for operating your aircraft to a place where the repairs or modifications can be accomplished. FAA may also decline to issue a special flight permit in particular cases if we determine you cannot move the aircraft safely.

**§ 39.25 How do I get a special flight permit?**

Apply to FAA for a special flight permit following the procedures in 14 CFR 21.199.

**§ 39.27 What do I do if the airworthiness directive conflicts with the service document on which it is based?**

In some cases an airworthiness directive incorporates by reference a manufacturer's service document. In these cases, the service document becomes part of the airworthiness directive. In some cases the directions in the service document may be modified by the airworthiness directive. If there is a conflict between the service document and the airworthiness directive, you must follow the requirements of the airworthiness directive.

Issued in Washington, DC, on July 10, 2002.

**Jane F. Garvey,**

*Administrator.*

[FR Doc. 02–17743 Filed 7–19–02; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

**Monday,**
**July 22, 2002**

## Part V

# Department of Housing and Urban Development

**24 CFR Parts 21 and 24**
**Adoption of Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants); Proposed Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 21 and 24**

**[Docket No. FR–4692–P–01]**

**RIN 2502–AC81**

## Adoption of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** On January 23, 2002, a proposed common rule was published that announced substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. This rule would adopt those amendments.

**DATES:** *Comment Due Date:* September 20, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dane Narode, Deputy Chief Counsel for Administrative Proceedings, Departmental Enforcement Center, Department of Housing and Urban Development, 1250 Maryland Avenue, Suite 200, Washington, DC 20024; telephone (202) 708–2350 (this is not a toll-free number); e-mail: *Dane_M._Narode@HUD.gov.* Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal information relay service during working hours at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On January 23, 2002 (67 FR 3266), a governmentwide common rule was published that proposed substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. The publication is available at *http://www.access.gpo.gov/su_docs.*

Through this proposed rule, HUD would adopt the changes and amendments made in the common rule. In addition, HUD is proposing in this rule to adopt specific requirements that, along with the provisions in the common rule, would best serve HUD's programs.

HUD's proposed rule inserts an additional paragraph regarding employment contracts to the definition of ''covered transaction'' found at § 24.200. HUD's addition makes clear that each payment under an employment contract constitutes a new ''covered transaction.'' HUD has also enhanced the exclusion review that takes place in § 24.300. Under HUD's proposed rule, a participant must ensure it is not entering into a covered transaction with an excluded or disqualified person. In reviewing for an exclusion, however, HUD, at section § 24.300(d), exempts participants from checking on the exemption status of their principals while making salary payments pursuant to an employment contract.

Additionally, § 24.440 proposes to use terms or conditions to the award transaction as a means to enforce exclusions under HUD transactions rather than written certifications.

HUD proposes to provide examples for the debarment and suspension common rule definition of ''principal'' found at § 24.995. The expansion contains minor modifications consistent with HUD's present practice regarding the definition of ''principal'' for the purpose of debarments and suspensions. HUD is retaining its definitions of ''Hearing Officer'' at § 24.947 and ''Ultimate Beneficiary'' at § 24.1017 as found in the current common rule. The proposed rule makes clear in § 24.750 and § 24.845 that all fact finding referrals for HUD suspensions and debarments will be made to hearing officers.

Subpart J of part 24, which addresses limited denial of participation, has been revised stylistically so that the rule conforms to the question and answer format of the proposed rule. HUD has removed the term ''contractor'' from § 24.1105 because the proposed rule has deleted the definition of the term. The revised definition of ''participant'' in the proposed rule covers individuals previously defined as ''contractors'' in the current rule. Section 24.1145, which addresses imputing the conduct of one person to another in a limited denial of participation, has been revised to be consistent with the provisions of § 24.630.

Finally, the requirements for maintaining a drug-free workplace are being enacted as a new part 21, codifying HUD's drug-free workplace requirements.

**List of Subjects**

*24 CFR Part 21*

Administrative practice and procedure, Grant programs, Drug-free workplace, Reporting and recordkeeping rquirements.

*24 CFR Part 24*

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Technical assistance, Reporting and recordkeeping requirements.

For the reasons stated in the common preamble, the Department of Housing and Urban Development amends 24 CFR Chapter I, as follows:

1. A new part 21 is added to read as follows:

## PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

### Subpart A—Purpose and Coverage

Sec.

21.100 What does this part do?
21.105 Does this part apply to me?
21.110 Are any of my Federal assistance awards exempt from this part?
21.115 Does this part affect the Federal contracts that I receive?

### Subpart B—Requirements for Recipients Other Than Individuals

21.200 What must I do to comply with this part?
21.205 What must I include in my drug-free workplace statement?
21.210 To whom must I distribute my drug-free workplace statement?
21.215 What must I include in my drug-free awareness program?
21.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?
21.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?
21.230 How and when must I identify workplaces?

### Subpart C—Requirements for Recipients Who Are Individuals

21.300 What must I do to comply with this part if I am an individual recipient?
21.301 [Reserved]

### Subpart D—Responsibilities of HUD Awarding Officials

21.400 What are my responsibilities as an HUD awarding official?

### Subpart E—Violations of this Part and Consequences

21.500 How are violations of this part determined for recipients other than individuals?

21.505 How are violations of this part determined for recipients who are individuals?
21.510 What actions will the Federal Government take against a recipient determined to have violated this part?
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**Subpart F—Definitions**

21.605 Award.
21.610 Controlled substance.
21.615 Conviction.
21.620 Cooperative agreement.
21.625 Criminal drug statute.
21.630 Debarment.
21.635 Drug-free workplace.
21.640 Employee.
21.645 Federal agency or agency.
21.650 Grant.
21.655 Individual.
21.660 Recipient.
21.665 State.
21.670 Suspension.

**Authority:** 41 U.S.C. 701; 42 U.S.C. 3535.

## Subpart A—Purpose and Coverage

### § 21.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

### § 21.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either:

(1) A recipient of an assistance award from the Department of Housing and Urban Development; or

(2) An HUD awarding official. (See definitions of award and recipient in §§ 21.605 and 21.660, respectively.)

(b) The following table shows the subparts that apply to you:

| If you are . . . | see sections . . . |
|---|---|
| (1) a recipient who is *not* an individual | 24.2110–24.2230<br>24.2500–24.2515 |
| (2) a recipient who is an individual | 24.2110–24.2115<br>24.2300–24.2301<br>24.2500–24.2515 |
| (3) a HUD awarding official | 24.2100–24.2115<br>24.2400–24.2500<br>24.2515 |

### § 21.110 Are any of my Federal assistance awards exempt from this part?

This part does not apply to any award that the Secretary determines the application of which would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

### § 21.115 Does this part affect the Federal contracts that I receive?

It will affect future contract awards indirectly if you are debarred or suspended for a violation of the requirements of this part, as described in § 21.510(c). However, this part does not apply directly to procurement contracts. The portion of the Drug-Free Workplace Act of 1988 that applies to Federal procurement contracts is carried out through the Federal Acquisition Regulation in chapter 1 of Title 48 of the Code of Federal Regulations (the drug-free workplace coverage currently is in 48 CFR part 23, subpart 23.5).

## Subpart B—Requirements for Recipients Other Than Individuals

### § 21.200 What must I do to comply with this part?

There are two general requirements if you are a recipient other than an individual.

(a) First, you must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in the subsequent sections of this subpart. Briefly, those measures are to:

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 21.205 through 21.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 21.225).

(b) Second, you must identify all known workplaces under your Federal awards (see § 21.230).

### § 21.205 What must I include in my drug-free workplace statement?

You must publish a statement that:

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) Lets each employee know that, as a condition of employment under any award, he or she:

(1) Will abide by the terms of the statement; and

(2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

### § 21.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in § 21.205 be given to each employee who will be engaged in the performance of any Federal award.

### § 21.215 What must I include in my drug-free awareness program?

You must establish an ongoing drug-free awareness program to inform employees about:

(a) The dangers of drug abuse in the workplace;

(b) Your policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that you may impose upon them for drug abuse violations occurring in the workplace.

### § 21.220 By when must I publish my drug-free workplace statement and establish my drug-free awareness program?

If you are a new recipient that does not already have a policy statement as described in § 24.2205 and an ongoing awareness program as described in § 24.2215, you must publish the statement and establish the program by the time given in the following table:

| If . . . | then you . . . |
|---|---|
| (a) the performance period of the award is less than 30 days | must have the policy statement and program in place as soon as possible, but before the date on which performance is expected to be completed. |
| (b) the performance period of the award is 30 days or more | must have the policy statement and program in place within 30 days after award. |

| If . . . | then you . . . |
|---|---|
| (c) you believe there are extraordinary circumstances that will require more than 30 days for you to publish the policy statement and establish the awareness program. | may ask the HUD awarding official to give you more time to do so. The amount of additional time, if any, to be given is at the discretion of the awarding official. |

**§ 21.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?**

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by § 21.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must:

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either:

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

**§ 21.230 How and when must I identify workplaces?**

(a) You must identify all known workplaces under each HUD award. A failure to do so is a violation of your drug-free workplace requirements. You may identify the workplaces:

(1) To the HUD official that is making the award, either at the time of application or upon award; or

(2) In documents that you keep on file in your offices during the performance of the award, in which case you must make the information available for inspection upon request by HUD officials or their designated representatives.

(b) Your workplace identification for an award must include the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

(c) If you identified workplaces to the HUD awarding official at the time of application or award, as described in paragraph (a)(1) of this section, and any workplace that you identified changes during the performance of the award, you must inform the HUD awarding official.

## Subpart C—Requirements for Recipients Who Are Individuals

**§ 21.300 What must I do to comply with this part if I am an individual recipient?**

As a condition of receiving an HUD award, if you are an individual recipient, you must agree that:

(a) You will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity related to the award; and

(b) If you are convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity, you will report the conviction:

(1) In writing;

(2) Within 10 calendar days of the conviction;

(3) To the HUD awarding official or other designee for each award that you currently have, unless § 21.301 or the award document designates a central point for the receipt of the notices. When notice is made to a central point, it must include the identification number(s) of each affected award.

**§ 21.301 [Reserved]**

## Subpart D—Responsibilities of HUD Awarding Officials

**§ 21.400 What are my responsibilities as an HUD awarding official?**

As an HUD awarding official, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in:

(a) Subpart B of this part, if the recipient is not an individual; or

(b) Subpart C of this part, if the recipient is an individual.

## Subpart E—Violations of this Part and Consequences

**§ 21.500 How are violations of this part determined for recipients other than individuals?**

A recipient other than an individual is in violation of the requirements of this part if the Secretary determines, in writing, that:

(a) The recipient has violated the requirements of Subpart B of this part; or

(b) The number of convictions of the recipient's employees for violating criminal drug statutes in the workplace is large enough to indicate that the recipient has failed to make a good faith effort to provide a drug-free workplace.

**§ 21.505 How are violations of this part determined for recipients who are individuals?**

An individual recipient is in violation of the requirements of this part if the Secretary determines, in writing, that:

(a) The recipient has violated the requirements of Subpart C of this part; or

(b) The recipient is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

**§ 21.510 What actions will the Federal Government take against a recipient determined to have violated this part?**

If a recipient is determined to have violated this part, as described in § 21.500 or 21.505, the Department of Housing and Urban Development may take one or more of the following actions:

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 24 CFR part 24, for a period not to exceed five years.

**§ 21.515 Are there any provisions for exceptions to those actions?**

The Secretary may waive with respect to a particular award, in writing, a suspension of payments under an award, suspension or termination of an award, or suspension or debarment of a recipient if the Secretary determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

## Subpart F—Definitions

### § 21.605 Award.

Award means an award of financial assistance by the Department of Housing and Urban Development or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Governmentwide rule (codified in HUD's regulations at 24 CFR part 85) that implements OMB Circular A–102 and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veteran's benefits to individuals (i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

### § 21.610 Controlled substance.

Controlled substance means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15.

### § 21.615 Conviction.

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

### § 21.620 Cooperative agreement.

Cooperative agreement means an award of financial assistance that, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of grant in § 21.650), except that substantial involvement is expected between the Federal agency and the recipient when carrying out the activity contemplated by the award. The term does not include cooperative research and development agreements as defined in 15 U.S.C. 3710a.

### § 21.625 Criminal drug statute.

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance.

### § 21.630 Debarment.

Debarment means an action taken by a Federal agency to prohibit a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions. A recipient so prohibited is debarred, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Governmentwide Debarment and Suspension (Nonprocurement), that implements Executive Order 12549 and Executive Order 12689.

### § 21.635 Drug-free workplace.

Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

### § 21.640 Employee.

(a) Employee means the employee of a recipient directly engaged in the performance of work under the award, including:

(1) All direct charge employees;

(2) All indirect charge employees, unless their impact or involvement in the performance of work under the award is insignificant to the performance of the award; and

(3) Temporary personnel and consultants who are directly engaged in the performance of work under the award and who are on the recipient's payroll.

(b) This definition does not include workers not on the payroll of the recipient (e.g., volunteers), even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces.

### § 21.645 Federal agency or agency.

Federal agency or agency means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency.

### § 21.650 Grant.

Grant means an award of financial assistance that, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Federal Government's direct benefit or use; and

(b) In which substantial involvement is not expected between the Federal agency and the recipient when carrying out the activity contemplated by the award.

### § 21.655 Individual.

Individual means a natural person.

### § 21.660 Recipient.

Recipient means any individual, corporation, partnership, association, unit of government (except a Federal agency), or legal entity, however organized, that receives an award directly from a Federal agency.

### § 21.665 State.

State means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

### § 21.670 Suspension.

Suspension means an action taken by a Federal agency that immediately prohibits a recipient from participating in Federal Government procurement contracts and covered nonprocurement transactions for a temporary period, pending completion of an investigation and any judicial or administrative proceedings that may ensue. A recipient so prohibited is suspended, in accordance with the Federal Acquisition Regulation for procurement contracts (48 CFR part 9, subpart 9.4) and the common rule, Governmentwide Debarment and Suspension (Nonprocurement) that implements Executive Order 12549 and Executive Order 12689. Suspension of a recipient is a distinct and separate action from suspension of an award or suspension of payments under an award.

2. Part 24 is revised to read as set forth at 67 FR 3273, January 23, 2002:

## PART 24—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Sec.

24.25 How is this part organized?
24.50 How is this part written?
24.75 Do terms in this part have special meanings?

### Subpart A—General

24.100 What does this part do?
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24.110 What is the purpose of the nonprocurement debarment and suspension system?
24.115 How does an exclusion restrict a person's involvement in covered transactions?
24.120 May we grant an exception to let an excluded person participate in a covered transaction?
24.125 Does an exclusion under the nonprocurement system affect a person's eligibility to participate in Federal procurement contracts?
24.130 Does an exclusion under the Federal procurement system affect a person's eligibility to participate in nonprocurement transactions?
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24.140 How do I know if a person is excluded?
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**Subpart B—Covered Transactions**

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24.220 Are any procurement contracts included as covered transactions?
24.225 How do I know if a transaction that I may participate in is a covered transaction?

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24.315 Must I verify that principals of my covered transactions are eligible to participate?
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24.325 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

**Disclosing Information—Primary Tier Participants**

24.330 What information must I provide before entering into a covered transaction with the Department of Housing and Urban Development?
24.335 If I disclose unfavorable information required under § 24.330 will I be prevented from entering into the transaction?
24.340 What happens if I fail to disclose the information required under § 24.330?
24.345 What must I do if I learn of the information required under § 24.330 after entering into a covered transaction with the Department of Housing and Urban Development?

**Disclosing information—Lower Tier Participants**

24.350 What information must I provide to a higher tier participant before entering into a covered transaction with that participant?
24.355 What happens if I fail to disclose the information required under § 24.350?
24.360 What must I do if I learn of information required under § 24.350 after entering into a covered transaction with a higher tier participant?

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24.410 May I approve a participant's use of the services of an excluded person?
24.415 What must I do if a Federal agency excludes the participant or a principal after I enter into a covered transaction?
24.420 May I approve a transaction with an excluded or disqualified person at a lower tier?
24.425 When do I check to see if a person is excluded or disqualified?
24.430 How do I check to see if a person is excluded or disqualified?
24.435 What must I require of a primary tier participant?
24.440 What method do I use to communicate those requirements to participants?
24.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?
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24.515 What specific information is on the List?
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24.525 Whom do I ask if I have questions about a person on the List?
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24.605 How does suspension differ from debarment?
24.610 What procedures does the Department of Housing and Urban Development use in suspension and debarment actions?
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24.620 Do Federal agencies coordinate suspension and debarment actions?
24.625 What is the scope of a suspension or debarment action?
24.630 May the Department of Housing and Urban Development impute the conduct of one person to another?
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24.705 What does the suspending official consider in issuing a suspension?
24.710 When does a suspension take effect?
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24.720 How may I contest a suspension?
24.725 How much time do I have to contest a suspension?
24.730 What information must I provide to the suspending official if I contest a suspension?
24.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?
24.740 Are suspension proceedings formal?
24.745 Is a record made of fact-finding proceedings?
24.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?
24.755 When will I know whether the suspension is continued or terminated?
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**Subpart H—Debarment**

24.800 What are the causes for debarment?
24.805 What notice does the debarring official give me if I am proposed for debarment?
24.810 When does a debarment take effect?
24.815 How may I contest a proposed debarment?
24.820 How much time do I have to contest a proposed debarment?
24.825 What information must I provide to the debarring official if I contest a proposed debarment?
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24.835 Are debarment proceedings formal?
24.840 Is a record made of fact-finding proceedings?
24.845 What does the debarring official consider in deciding whether to debar me?
24.850 What is the standard of proof in a debarment action?

24.855 Who has the burden of proof in a debarment action?
24.860 What factors may influence the debarring official's decision?
24.865 How long may my debarment last?
24.870 When do I know if the debarring official debars me?
24.875 May I ask the debarring official to reconsider a decision to debar me?
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**Subpart I—Definitions**

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24.910 Agency.
24.915 Agent or representative.
24.920 Civil judgment.
24.925 Conviction.
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24.945 Excluded or exclusion.
24.947 Hearing officer.
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24.960 Legal proceedings.
24.965 List of parties excluded or disqualified from federal procurement and nonprocurement programs.
24.970 Nonprocurement transaction.
24.975 Notice.
24.980 Participant.
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24.990 Preponderance of the evidence.
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Appendix to part 24—Covered Transactions.

**Subpart J—Limited Denial of Participation**

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24.1105 Who may issue a limited denial of participation?
24.1110 When may a HUD official issue a limited denial of participation?
24.1115 When does a limited denial of participation take effect?
24.1120 How long may a limited denial of participation last?
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**Authority:** 41 U.S.C. 701 *et seq.:* 42 U.S.C. 3535(d); Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235).

3. Part 24 is further amended as set forth below.

a. ''[Agency noun]'' is removed and ''the Department of Housing and Urban Development'' is added in its place wherever it occurs.

b. ''[Agency adjective]'' is removed and ''HUD'' is added in its place wherever it occurs.

c. ''[Agency head or designee]'' is removed and ''HUD Debarring Official or designee'' is added in its place wherever it occurs.

4. Section 24.200 is further amended by adding a paragraph (c) to read as follows:

**§ 24.200 What is a covered transaction?**

* * * * *

(c) In the case of employment contracts that are covered transactions, each salary payment under the contract is a separate covered transaction.

5. Section 24.300 is further amended by adding paragraphs (c) and (d) to read as follows:

**§ 24.300 May I enter into a covered transaction with an excluded or disqualified person?**

* * * * *

(c) You as a participant are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so. You may, but are not required to, check the *List*.

(d) In the case of an employment contract, HUD does not require employers to check the *List* prior to making salary payments pursuant to that contract.

6. Section 24.440 is added to read as follows:

**§ 24.440 What method do I use to communicate those requirements to participants?**

To communicate the requirements to participants, you must include a term or condition in the transaction requiring the participants' compliance with subpart C of this part and requiring them to include a similar term or condition in lower tier covered transactions.

7. Section 24.750 is further amended by adding a paragraph (c) to read as follows:

**§ 24.750 What does the suspending official consider in deciding whether to continue or terminate my suspension?**

* * * * *

(c) The official receiving the referral for findings of fact regarding disputed material facts must be a hearing officer in all HUD suspensions.

8. Section 24.845 is further amended by adding a paragraph (d) to read as follows:

**§ 24.845 What does the debarring official consider in deciding whether to debar me?**

* * * * *

(d) The official receiving the referral for findings of fact regarding disputed material facts must be a hearing officer in all HUD debarments.

9. Section 24.947 is added to read as follows:

**§ 24.947 Hearing officer.**

*Hearing officer* means an Administrative Law Judge or Board of Contract Appeals Judge authorized by HUD's Secretary or by the Secretary's designee, to conduct proceedings under this part.

10. Section 24.995 is further amended by adding a paragraph (c) to read as follows:

**§ 24.995 Principal.**

* * * * *

(c) A person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. Persons who have a critical influence on, or substantive control over, a covered transaction may include, but are not limited to:

(1) Loan officers;

(2) Staff appraisers and inspectors;

(3) Underwriters;

(4) Bonding companies;

(5) Borrowers under programs financed by HUD or with loans guaranteed, insured, or subsidized through HUD programs;

(6) Purchasers of properties with HUD-insured or Secretary-held mortgages;

(7) Recipients under HUD assistance agreements;

(8) Ultimate beneficiaries of HUD programs;

(9) Fee appraisers and inspectors;

(10) Real estate agents and brokers;

(11) Management and marketing agents;

(12) Accountants, consultants, investment bankers, architects, engineers, and attorneys who are in a business relationship with participants in connection with a covered transaction under a HUD program;

(13) Contractors involved in the construction or rehabilitation of

properties financed by HUD, with HUD insured loans, or acquired properties, including properties held by HUD as mortgagee-in-possession;

(14) Closing agents;

(15) Turnkey developers of projects financed by or with financing insured by HUD;

(16) Title companies;

(17) Escrow agents;

(18) Project owners;

(19) Administrators of nursing homes and projects for the elderly financed or insured by HUD; and,

(20) Developers, sellers or owners of property financed with loans insured under title I or title II of the National Housing Act.

11. Subpart J is added to Part 24 to read as follows:

## Subpart J—Limited Denial of Participation

### § 24.1100 What is a limited denial of participation?

A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD Field Office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD Field Office but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and in the best interests of the Government.

### § 24.1105 Who may issue a limited denial of participation?

The Secretary designates HUD Officials who are authorized to impose a limited denial of participation, affecting any participant and/or their affiliates, except FHA approved mortgagees.

### § 24.1110 When may a HUD official issue a limited denial of participation?

(a) An authorized HUD official may issue a limited denial of participation against a person based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) Irregularities in a person's past performance in a HUD program;

(3) Failure of a person to maintain the prerequisites of eligibility to participate in a HUD program;

(4) Failure to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) Failure to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) Deficiencies in ongoing construction projects;

(7) Falsely certifying in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) Commission of an offense listed in § 24.800;

(9) Violation of any law, regulation, or procedure relating to the application for financial assistance, insurance or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(10) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department;

(11) Imposition of a limited denial of participation by any other HUD office; or

(12) Debarment or suspension by another federal agency for any cause substantially the same as provided in § 24.800.

(b) Filing of a criminal Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions. The Indictment or Information need not be based on offenses against HUD.

(c) Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for additional conference or further hearing.

(d) An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

### § 24.1115 When does a limited denial of participation take effect?

A limited denial of participation is effective immediately upon issuance of the notice.

### § 24.1120 How long may a limited denial of participation last?

A limited denial of participation may remain effective up to 12 months.

### § 24.1125 How does a limited denial of participation start?

A limited denial of participation is made effective by providing the person, and any specifically named affiliate, with notice:

(a) That the limited denial of participation is being imposed;

(b) Of the cause(s) under § 24.1110 for the sanction;

(c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;

(d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 24.1130; and

(e) Of the right to contest the limited denial of participation under § 24.1130.

### § 24.1130 How may I contest my limited denial of participation?

(a) Within 30 days after receiving a notice of limited denial of participation, you may request a conference with the official who issued such notice. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless you waive this time limit. The official who imposed the sanction, or designee, shall preside. At the conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed upon extension of time for submission of additional materials, the official or designee shall, in writing, advise you of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise you of the opportunity to contest the notice and request a hearing before a Departmental Hearing Officer. You have 30 days after receipt of the notice of affirmation to request this hearing. If the official or designee does not issue a decision within the 20-day period, you may contest the sanction before a Departmental Hearing Officer. Again, you have 30 days from the expiration of the 20-day period to request this hearing. If you request a hearing before the Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., B 133 Portals 200, Washington, DC 20410.

(b) You may skip the conference with the official and you may request a hearing before a Departmental Hearing Officer. This must also be done within 30 days after receiving a notice of limited denial of participation. If you opt to have a hearing before a Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing

and Urban Development, 451 Seventh Street, SW., B 133 Portals 200, Washington, DC 20410. The hearing before the Departmental Hearing Officer is more formal than the conference before the sanctioning official described above. The hearing before the Departmental Hearing Officer will be conducted in accordance with 24 CFR part 26, subpart A. The Departmental Hearing Officer will issue findings of fact and make a recommended decision. The sanctioning official will then make a final decision as promptly as possible after the Departmental Hearing Officer recommended decision is issued. The sanctioning official may reject the recommended decision or any findings of fact, only after specifically determining the decision or any of the facts to be arbitrary or capricious or clearly erroneous.

**§ 24.1135 Do Federal Agencies coordinate limited denial of participation actions?**

Federal agencies do not coordinate limited denial of participation actions. As stated in § 24.1100, a limited denial of participation is a HUD specific action and applies only to HUD activities.

**§ 24.1140 What is the scope of a limited denial of participation?**

The scope of a limited denial of participation is as follows:

(a) A limited denial of participation generally extends only to participation in the program under which the cause arose. Program may, in the discretion of the authorized official, include any or all of the functions within the jurisdiction of an Assistant Secretary. The authorized official, however, may determine that the sanction shall apply to all programs throughout HUD where the sanction is based on an indictment or conviction.

(b) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts.

(c) The sanction may be imposed for a period not to exceed 12 months, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary in which case the sanction may be imposed on either a nationwide or a more restricted basis.

**§ 24.1145 May HUD impute the conduct of one person to another in a limited denial of participation?**

For purposes of determining a limited denial of participation, HUD may impute conduct as follows:

(a) *Conduct imputed to participant.* HUD may impute the fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval or acquiescence. The participant's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed to individuals associated with participant.* HUD may impute the fraudulent, criminal, or other seriously improper conduct of a participant to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(c) *Conduct of one participant imputed to other participants in a joint venture.* HUD may impute the fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application or similar arrangement, or with the knowledge, approval, or acquiescence of those participants. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

**§ 24.1150 What is the effect of a suspension or debarment on a limited denial of participation?**

If you have submitted a request for a hearing pursuant to § 24.1130 of this section, and you also receive, pursuant to subpart G or H of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or conduct as the limited denial of participation, as determined by the debarring or suspending official, the following rules shall apply:

(a) During the 30-day period after you receive a proposed debarment or suspension, during which you may elect to contest the debarment under § 24.815, or the suspension pursuant to § 24.720, all proceedings in the limited denial of participation, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to § 24.815, or the suspension pursuant to § 24.720, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(c) If you contest the proposed debarment pursuant to § 24.815, or the suspension pursuant to § 24.720, then:

(1) Those parts of the limited denial of participation and the debarment or suspension based on the same transaction(s) or conduct, as the determined by the debarring or suspending official, shall be immediately consolidated before the debarring or suspending official;

(2) Jurisdiction of the hearing officer under 24 CFR part 24, subpart J, to hear those parts of the limited denial of participation based on the same transaction(s) or conduct as the debarment or suspension, as determined by the debarring or suspending official, shall be divested, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarring or suspending official; and

(3) The debarring or suspending official shall hear the entire consolidated case under the procedures governing debarments and suspensions, and shall issue a final decision as to both the limited denial of participation and the debarment or suspension.

**§ 24.1155 What is the effect of a limited denial of participation on a suspension or a debarment?**

The imposition of a limited denial of participation does not affect the right of the Department to suspend or debar any person under this part.

**§ 24.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?**

If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it.

**§ 24.1165 How is a limited denial of participation reported?**

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 24.1130 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Compliance Division in the Departmental Enforcement Center of the scope of the limited denial of participation.

Dated: June 5, 2002.

**Mel Martinez,**

*Secretary.*

[FR Doc. 02–18309 Filed 7–19–02; 8:45 am]

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| 1–124 | (869–044–00120–9) | 45.00 | July 1, 2001 |
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| **36 Parts** | | | |
| 1–199 | (869–044–00127–6) | 34.00 | July 1, 2001 |
| 200–299 | (869–044–00128–4) | 33.00 | July 1, 2001 |
| 300–End | (869–044–00129–2) | 55.00 | July 1, 2001 |
| **37** | (869–044–00130–6) | 45.00 | July 1, 2001 |
| **38 Parts:** | | | |
| 0–17 | (869–044–00131–4) | 53.00 | July 1, 2001 |
| 18–End | (869–044–00132–2) | 55.00 | July 1, 2001 |
| **39** | (869–044–00133–1) | 37.00 | July 1, 2001 |
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| **44** | (869–044–00171–3) | 45.00 | Oct. 1, 2001 |
| **45 Parts:** | | | |
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| 200–499 | (869–044–00173–0) | 31.00 | Oct. 1, 2001 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.