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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 451

RIN 3206–AJ65

Awards

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to amend the rules governing Presidential Rank Awards to implement the Treasury and General Government Appropriations Act of 2002 which extends eligibility for Presidential Rank Awards to certain senior career employees. The regulations also incorporate existing requirements pertaining to rank awards for career members of the Senior Executive Service (SES) currently found in guidance that OPM provides annually to agencies and previously included in the former Federal Personnel Manual. The amendments will also enhance the clarity of the regulations and improve readability.

DATES: *Effective Date:* The interim regulations are effective on September 12, 2002.

Comments Date: Comments must be received on or before October 15, 2002.

ADDRESSES: Send or deliver written comments to Joyce Edwards, Director, Office of Executive Resources Management, U.S. Office of Personnel Management, 1900 E Street NW., Room 6484, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Anne Kirby, (202) 606–1610, or e-mail to *SESmgmt@opm.gov*.

SUPPLEMENTARY INFORMATION: The regulations amend part 451 to add a new subpart, subpart C—Presidential Rank Awards. This new subpart incorporates current requirements for awards for members of the Senior Executive Service (SES) found in subpart B—Presidential Awards, as well as new requirements for awards for senior career employees.

Background

Each year, the President may award the ranks of *Distinguished Executive* and *Meritorious Executive* to a small select group of career members of the Senior Executive Service (SES) to recognize sustained, extraordinary leadership accomplishments. The Office of Personnel Management administers the rank award program for the President. Agency heads submit nominations for rank awards to OPM, which reviews the nominations and recommends to the President which nominees should receive the awards, in accordance with 5 U.S.C. 4507 and regulations currently at 5 CFR part 451, subpart B. Section 4506 of title 5 authorizes OPM to prescribe regulations and instructions to implement the Presidential Rank Awards program.

Ranks for Senior Career Employees

Section 641 of the Treasury and General Government Appropriations Act of 2002 (Pub. L. 107–67, enacted 11–12–01) extended eligibility for Presidential Rank Awards to certain senior career employees. This new provision is codified in a new section of Chapter 45 of title 5 (5 U.S.C. 4507a). The public law defines a ''senior career employee'' as an individual appointed to a position classified above GS–15 and paid under 5 U.S.C. 5376, who is not serving under a time-limited appointment or in a position that is excepted from the competitive service because of its confidential or policy-making character. Senior career employees are individuals who occupy Senior-Level (SL) or Scientific-Professional (ST) positions.

Agency heads may nominate senior career employees to be awarded the ranks of *Distinguished Senior Professional* for sustained extraordinary accomplishment and *Meritorious Senior Professional* for sustained accomplishment in a manner similar to the nominations of career members of the SES.

In accordance with 5 U.S.C. 4507a, the regulations establish basic eligibility criteria that are consistent with criteria long-established for the SES. These eligibility requirements are: (1) Hold a career appointment in a Senior-Level (SL) or Scientific-Professional (ST) position that is subject to OPM position allocations under part 319 and paid under 5 U.S.C. 5376 on the nomination deadline set by OPM; (2) be an employee of the nominating agency on the nomination deadline set by OPM; and (3) have at least 3 years of career or career-type Federal civilian service above GS–15. Individuals who have been awarded a Distinguished or Meritorious rank are not entitled to receive the same rank during the next 4 fiscal years. In addition, the Governmentwide number of career senior employees awarded the rank of *Distinguished Senior Professional* may not exceed 1 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions, and the number awarded the rank of *Meritorious Senior Professional* is limited to 5 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions.

As with SES nominations, agencies may nominate up to 9 percent of their career senior employees for rank awards. Generally, there should be no more than one Distinguished nominee from an agency for every five Meritorious nominees, in keeping with the proportion of awardees allowed Governmentwide.

Senior career employees receiving the Distinguished rank award will receive a lump-sum payment of 35 percent of basic pay; those receiving the Meritorious rank award will receive a lump-sum payment of 20 percent of basic pay.

Senior career employees will be eligible for rank awards beginning with awards granted by the President in 2003.

Ranks for Members of the Senior Executive Service

The regulations incorporate existing eligibility and other requirements for career members of the SES currently found in guidance and instructions that OPM provides annually to agencies on rank award nominations and that was previously included in the former Federal Personnel Manual, Supplement 920–1. Although agencies are required under 5 U.S.C. 4506 to comply with OPM regulations and instructions on award programs, we have decided to

place all requirements in regulation. This is a more compact and effective way to convey the requirements and may avoid misinterpretations.

The basic eligibility requirements are: (1) The SES appointee must hold a career appointment in the SES on the nomination deadline set by OPM; (2) the nominee must be an employee of the nominating agency on the nomination deadline set by OPM; and (3) the nominee must have at least 3 years of career or career-type Federal civilian service at the SES level. Qualifying service includes appointments in the SES, Senior Foreign Service, the Defense Intelligence Senior Executive Service, and similar senior executive systems. Qualifying service does not include noncareer, limited term, or limited emergency appointments in the SES or their equivalent, Scientific and Professional (ST) appointments, or Senior-Level (SL) appointments.

The number of Distinguished and Meritorious rank recipients is limited Governmentwide to a total of 6 percent of the career SES, but there is no statutory limit on the number of recipients by agency. In order to provide adequate competition, agencies may nominate up to 9 percent of their career SES appointees for rank awards.

Table of Changes

The following table lists the changes to the current regulations. The ''current rule'' column lists the regulations in the current subpart B affected by the interim regulations. The ''interim rule'' column shows the disposition of the current rules and new rules in the new subpart C. The third column explains the changes.

Current rule	Interim rule	Explanation of change
451.201(c)	451.301(a)	Moves current SES provisions from subpart B to the new subpart C; redesignates remaining paragraphs in 451.201.
451.203(a)	451.305(a) and (b)	Moves current OPM responsibilities for reviewing rank award nominations and making recommendations to the President from subpart B to the new subpart C; separates the responsibilities into two paragraphs; and redesignates remaining paragraphs in 451.203.
	451.301(b) and (c)	Incorporates in regulation existing SES rank award eligibility requirements. These requirements have been included in annual rank award guidance and instructions to agencies and were included in the former FPM Supplement 92–1.
	451.302(a)	Implements new statutory provisions for rank awards for senior career employees.
	451.302(b) and (c)	Provides rank award eligibility requirements for senior career employees. Requirements are consistent with those for SES members.
	451.303	Implements statutory restrictions on awards for SES appointees and senior career employees, including Governmentwide limits on the number of awards that the President may grant each year and limits on how often individual employees can receive awards.
	451.304	Implements statutory provisions for paying rank awards, including individual award amounts and compliance with annual aggregate compensation limits.

Waiver of Notice of Proposed Rulemaking

I find that good cause exists to waive the general notice of proposed rulemaking. These regulations implement section 641 of Public Law 107–67, which mandates that the amendments shall take effect for awards granted in 2003. Implementing regulations must be published and supplemental guidance issued to agencies before OPM invites agency heads to submit nominations for the 2003 rank awards. The invitations are issued annually, in July or August, in order to give agencies maximum time to carefully evaluate and select nominees and prepare supporting documentation. Agency head nominations for the 2003 awards will be due to OPM in January 2003. The waiver of proposed rulemaking is necessary to ensure timely implementation of the law as intended by Congress.

E.O. 12866, Regulatory Review

This interim rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 451

Decorations, medals, awards, Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending 5 CFR part 451 as follows:

PART 451—AWARDS

1. The authority citation for part 451 continues to read as follows:

Authority: 5 U.S.C. 4302, 4501–4509, E.O. 11438, 12828.

Subpart B—Presidential Awards

§ 451.201 [Amended]

2. Section 451.201 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

§ 451.203 [Amended]

3. Section 451.203 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

4. Subpart C—Presidential Rank Awards is added to read as follows:

Subpart C—Presidential Rank Awards

Sec.

451.301 Ranks for the Senior Executive Service.
451.302 Ranks for senior career employees.
451.303 Restrictions.
451.304 Payment of Rank Awards.
451.305 Responsibilities of the Office of Personnel Management.

§ 451.301 Ranks for the Senior Executive Service.

(a) The circumstances under which the President may award the rank of

Distinguished Executive and Meritorious Executive to a Senior Executive Service (SES) career appointee are set forth in 5 U.S.C. 4507.

(b) To be eligible for a rank award, a senior executive must:

(1) Hold a career appointment in the SES, as defined at 5 U.S.C. 3132(a)(4), on the nomination deadline set by OPM;

(2) Be an employee of the agency, as defined at 5 U.S.C. 3132(a)(1), on the nomination deadline set by OPM; and

(3) Have at least 3 years of career or career-type Federal civilian service at the SES level. Service need not be continuous.

(i) Qualifying service includes appointments in the SES, the Senior Foreign Service, the Defense Intelligence Senior Executive Service, and similar senior executive systems.

(ii) Qualifying service does not include noncareer, limited term, or limited emergency appointments in the SES or their equivalent, Scientific and Professional (ST) appointments, and Senior-Level (SL) appointments.

(c) Each agency may nominate up to 9 percent of its SES career appointees for rank awards.

§ 451.302 Ranks for senior career employees.

(a) The circumstances under which the President may award the rank of Distinguished Senior Professional and Meritorious Senior Professional to a senior career employee are set forth in 5 U.S.C. 4507a.

(b) To be eligible for a rank award, a senior career employee must:

(1) Hold a career appointment in a Senior-Level (SL) or Scientific-Professional (ST) position that is subject to OPM position allocations under part 319 of this chapter and paid under 5 U.S.C. 5376 on the nomination deadline set by OPM;

(2) Be an employee of the agency on the nomination deadline set by OPM; and

(3) Have at least 3 years of career or career-type Federal civilian service above GS–15. Service need not be continuous. Qualifying service includes appointments that are not—

(i) Time-limited; or

(ii) To positions that are excepted from the competitive service because of their confidential or policy-making character.

(c) Each agency may nominate up to 9 percent of its career senior employees for rank awards.

§ 451.303 Restrictions.

(a) *Governmentwide limitations*—SES. During any fiscal year—

(i) The number of career SES appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the career SES; and

(ii) The number of career SES appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the career SES.

(b) *Governmentwide limitations—Senior career employees.* During any fiscal year—

(i) The number of career senior employees awarded the rank of Meritorious Senior Professional may not exceed 5 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions; and

(ii) The number of career senior employees awarded the rank of Distinguished Senior Professional may not exceed 1 percent of the total number of career appointees to OPM-allocated Senior-Level (SL) and Scientific-Professional (ST) positions.

(c) *Frequency of awards.* Individuals awarded a Distinguished or Meritorious rank under this subpart shall not be entitled to be awarded that rank during the following 4 fiscal years.

§ 451.304 Payment of Rank Awards.

(a) Receipt of the Distinguished rank by an SES career appointee or a career senior employee entitles the individual to a lump-sum payment of an amount equal to 35 percent of annual basic pay, which shall be in addition to the basic pay paid under 5 U.S.C. 5376 or 5382, or any award paid under 5 U.S.C. 5384.

(b) Receipt of the Meritorious rank by an SES career appointee or a career senior employee entitles such individual to a lump-sum payment of an amount equal to 20 percent of annual basic pay, which shall be in addition to the basic pay paid under 5 U.S.C. 5376 or 5382, or any award paid under 5 U.S.C. 5384.

(c) Payment of rank awards must comply with the restrictions on annual aggregate compensation at 5 U.S.C. 5307.

§ 451.305 Responsibilities of the Office of Personnel Management.

(a) Annually, OPM shall establish criteria, including terms, conditions, and evaluation factors, for rank award nominations, in consultation with agencies and other stakeholders. Agencies shall nominate individuals for rank awards in accordance with OPM criteria and any other instructions.

(b) Annually, OPM shall review agency recommendations for Presidential Rank Awards for SES career appointees and senior career employees under 5 U.S.C. 4507 and 4507a, and recommend to the President which of those individuals should receive rank awards.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AF00

Small Business Size Standards; Adoption of Size Standards by 2002 North American Industry Classification System for Size Standards

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Small Business Size Regulations by incorporating the Office of Management and Budget's (OMB) 2002 modifications of the North American Industry Classification System (NAICS) into its table of small business size standards. These modifications are limited to industries in six (6) NAICS Sectors. The modifications result in a small number of size standard changes to certain NAICS activities.

SBA believes that this rule is noncontroversial and routine, and SBA anticipates no adverse comments to this action. If SBA receives adverse comments, it will withdraw this rule. SBA is publishing concurrently in this issue of the **Federal Register** a proposed rule to achieve the same result, that is, to modify its Small Business Size Regulations as contemplated in this direct final rule.

DATES: This rule is effective October 1, 2002, without further action, unless adverse comment is received by September 12, 2002. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Address all comments concerning this rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 Third Street, SW., Washington, DC 20416, via e-mail to *sizestandards@sba.gov,* or via facsimile, (202) 205–6390. SBA will make all public comments available to any person or concern upon request.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA adopted North American Industry Classification System (NAICS) industry definitions as a basis for its table of

small business size standards effective October 1, 2000. The final rule was published in the **Federal Register** on May 5, 2000 (65 FR 30836) (NAICS 1997) and states the SBA Administrator's determination that the industry descriptions in NAICS shall be the basis for small business size standards.

OMB restructured and modified parts of NAICS effective January 1, 2002 (66 FR 3825, January 16, 2001) (NAICS 2002). This rule incorporates OMB's restructuring and modifications into SBA's table of size standards. NAICS 2002 is the same as NAICS 1997 for sixteen of the twenty industry Sectors. Two Sectors, Construction and Wholesale Trade are substantially changed. OMB also modified a number of classifications in the Retail Trades Sector, and the organization of the Information Sector.

Section 121.101(b) of Title 13 of the Code of Federal Regulations states ''NAICS is described in the *North American Industry Classification Manual—United States, 1997* * * *.'' At the time SBA published the final rule in the **Federal Register**, the only description of NAICS available was the NAICS 1997 manual. However, with OMB's 2002 modification of NAICS 1997, SBA believes that retaining a definition in its regulations based on a particular year is confusing and inconsistent with the SBA Administrator's determination in the May 5, 2000, **Federal Register** notice, which does not refer to any specific year.

Justification for October 1, 2002 Effective Date

SBA determined that NAICS 2002 should be implemented on October 1, 2002, because:

1. Federal Government recordkeeping and statistics will be collected more consistently and will be more comparable with other data for analyzing small business activity. The first Federal Government fiscal year after January 1, 2002, is October 1, 2002.

2. SBA and other users of size standards can collect data on their small business programs using the more recent NAICS format and can compare those data with future Federal statistics collected using NAICS 2002 industry classifications. The availability of such comparable data will ensure the credibility of analyses comparing program data with industry.

3. Small business size standards apply to most Federal agencies and their programs involving small businesses. Federal agencies that use NAICS and SBA's small business size standards will need time to determine how to implement the new size standards and to develop training tools necessary to do so. SBA believes that publishing this rule now provides sufficient time for agencies to convert and update their databases and tracking systems for implementation by the beginning of FY 2003.

How SBA Arrived at the Size Standards for NAICS 2002 Industries

On October 22, 1999, SBA published in the **Federal Register** (64 FR 57188) a proposed rule to establish a new table of small business size standards based on NAICS. SBA developed guidelines to transition from the Standard Industrial Classification System to NAICS. The guidelines were intended to minimize the impact on SBA's small business size standards. Table A, below, lists those guidelines. SBA received no negative comments to the guidelines specified in the proposed rule. Because the guidelines produced the desired results and received public acceptance, SBA published its final rule on May 5, 2000 (corrected on September 5, 2000, 65 FR 53533), establishing a new table of size standards based on NAICS without change from its proposed rule. For purposes of adopting NAICS 2002, SBA is applying the same guidelines in this rule.

TABLE A

If the NAICS 2002 industry is composed of:	The size standard for the NAICS industry would be:
1. One NAICS 1997 industry or part of one NAICS1997 industry	The same size standard as for the NAICS 1997 industry or part.
2. More than one NAICS 1997 industry; parts of more than one NAICS 1997 industry; or one or more NAICS 1997 industry and part(s) of one or more NAICS 1997 industry, and they all have the same size standard.	The same size standard as for those NAICS 1997 industries or parts of NAICS 1997 industries.
3. More than one NAICS 1997 industry; parts of more than one NAICS 1997 industry; or one or more NAICS 1997 industry and part(s) of one or more NAICS 1997 industry, and they do not all have the same size standard.	The same size standard as for the NAICS 1997 industry or NAICS 1997 industry part(s) that most closely matches the economic activity described by the NAICS 2002 industry.
4. One or more parts of an NAICS 1997 industry for which SBA has established specific size standards (*i.e.,* further segmented).	The same size standard as for that specific NAICS 1997 industry part.
5. One or more NAICS 1997 industries and/or parts of NAICS 1997 industries that were categorized broadly under the NAICS system as Services, Retail Trade, Wholesale Trade or Manufacturing, but are now categorized differently under NAICS.	SBA will (a) apply a size standard measure (*e.g.,* number of employees, annual receipts) typical of the NAICS Sector; and (b) apply the corresponding ''anchor'' size standard. The ''anchor'' size standards are $6 million [effective February 22, 2002] for Services and Retail Trade, 500 employees for Manufacturing and 100 employees for Wholesale Trade (except for Federal procurement programs, where the standard is 500 employees under the non-manufacturer rule).

Changes in Size Standards

Applying the guidelines to the NAICS 2002 restructuring and modifications results in a limited number of changes to current small business size standards. Specifically, there are 12 economic activities within nine (9) NAICS 1997 industries that reflect a size standard change when related to NAICS 2002. Eight (8) of those 12 economic activities increase, three (3) decrease, and for the remaining activity the basis for the size standard changes from annual receipts to number of employees. For the balance of the NAICS 1997 codes and their size standards, there are no size standards changes as a result of the NAICS 2002 reclassifications and recategorizations.

For complete information on the relationship between NAICS 1997 and NAICS 2002, please see the U.S. Bureau of the Census (Census Bureau) Web site at *http://www.census.gov/epcd/naics02/* That Web site contains complete

information on the establishment and implementation of NAICS 2002, including the January 16, 2001 (66 FR 3825) **Federal Register** notice of final decision to adopt NAICS 2002. The Census Bureau's Web site also contains three correspondence tables: (1) 2002 NAICS–US matched to 1997 NAICS–US; (2) 1997 NAICS–US matched to 2002 NAICS–US; and (3) 2002 NAICS–US matched to 1987 Standard Industrial Classification.

Table B below identifies the twelve (12) NAICS 1997 industries and economic activities that have revised size standards in the new table based on industries as they are described in NAICS 2002.

TABLE B

NAICS 1997		NAICS 1997 activity	NAICS 2002		NAICS 2002 industry
Code	Size std. ($ million)		Code	Size std. ($ million)	
213112	$6.0	Construction of Field Gathering Lines on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry).	237120	$28.5	Oil and Gas Pipeline and Related Structures Construction.
213112	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry).	238910	12.0	Site Preparation Contractors.
213113	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Coal Mining Industry).	238910	12.0	Site Preparation Contractors.
213114	6.0	Site Preparation and Related Constuction Activities on a Contract Basis (one activity of the Support Activities for Metal Mining Industry).	238910	12.0	Site Preparation Contractors.
213115	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Nonmetallic Minerals Industry).	238910	12.0	Site Preparation Contractors.
234990	28.5	Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (Except Cranes) With Operator (three activities of the All Other Heavy Construction Industry).	238910	12.0	Site Preparation Contractors.
234990	28.5	Rental of Cranes With Operator (one activity of the All Other Heavy Construction Industry).	238990	12.0	All Other Specialty Trade Contractors.
235810	12.0	Water Well Drilling Contractors (Entire Industry)	237110	28.5	Water and Sewer Line and Related Structures Construction.
235990	12.0	Indoor Swimming Pools (one activity if the All Other Special Trade Contractors Industry).	236220	28.5	Commercial and Institutional Building Construction.
235990	12.0	Anchored Earth Retention Contractors (one activity if the All Other Special Trade Contractors Industry).	237990	28.5	Other Heavy and Civil Engineering Construction.
514199	6.0	Internet Broadcasting (one activity of the All Other Information Services Industry).	516110	[1]	Internet Publishing and Broadcasting.
561720	14.0	Cleaning Buildings During and Immediately after Construction (one activity of the Janitorial Services Industry).	238990	12.0	All Other Specialty Trade Contractors.

[1] 500 Emp.

The 12 activities with a size standard change moved to seven (7) NAICS 2002 industries. Tables 3 through 9 show the composition of these NAICS 2002 industries and discuss the basis for selecting their size standards.

1. NAICS 236220, Commercial and Institutional Building Construction, $28.5 Million

This industry is the same as NAICS 233320 (NAICS 1997) with the addition of several activities from parts of three other construction (NAICS 1997) industries (see Table 1). Only one activity within the revised industry did not have a size standard of $28.5 million under NAICS 1997. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 1

AICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Barrack and Dormitory Construction (one activity of the Multifamily Housing Construction Industry)	233220	$28.5
Grain Elevators, Dry Cleaning Plants, and Manufacturing and Industrial Warehouses (activities of the Manufacturing and Industrial Building Construction Industry)	*233310	28.5
Commercial and Institutional Building Construction (entire industry)	*233320	28.5
Indoor Swimming Pools (one activity of the All Other Special Trade Contractors Industry)	*235990	12.0

2. NAICS 237110, Water and Sewer Line and Related Structures Construction, $28.5 Million

This industry is the same as NAICS 234910 (NAICS 1997) with the addition of several heavy construction related activities and the Water Well Drilling industry (see Table 2). Water and sewer line activities constituted a large majority of the previously defined industry. The inclusion of the Water Well Drilling industry accounts for less than 15 percent of the revised industry. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 2

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Water/Sewer Pumping Stations, Sewage Collection and Disposal Lines, Storm Sewers, Sewer/Water Mains and Lines, Water Storage Tanks and Towers, and Construction Management of these Projects (activities of the Water, Sewer, and Pipeline Construction Industry)	234910	$28.5
Irrigation Systems, Sewage Treatment and Water Treatment Plants, Construction Management of these Projects (activities of the All Other Heavy Construction Industry)	*234990	28.5
Water Well Drilling Contractors (entire industry)	235810	12.0

3. NAICS 237120, Oil and Gas Pipeline and Related Structures Construction, $28.5 Million

This is a new industry under the Heavy and Civil Engineering Subsector. It is comprised of activities from parts of three NAICS 1997 industries (see Table 3). All but one activity comprising this new industry had a $28.5 million size standard under NAICS 1997. Therefore, a $28.5 million size standard is adopted for this industry.

TABLE 3

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Construction of Field Gathering Lines on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry)	*213112	$6.0
Gas and Oil Pumping Stations, Gas and Oil Pipeline Construction, Gas Mains, Gas and Oil storage Tank Construction, and Construction Management of these Projects (activities of the Water, Sewer, and Pipeline Construction Industry)	*234910	28.5
Petrochemical Plants, Refineries, and Construction Management of these Projects (activities of the Industrial Nonbuilding Structure Construction Industry)	*234930	28.5

4. NAICS 237990, Other Heavy and Civil Engineering Construction, $28.5 Million

This industry is the same as NAICS 234990 (NAICS 1997) with a few minor changes (see Table 4). Two activities of parts of two construction industries were added to the previous (1997) NAICS industry and several activities were transferred from NAICS 234990 to other construction industries. Only one activity had a size standard different than $28.5 million under NAICS 1997. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 4

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Tunnel Construction (one activity of the Bridge and Tunnel Construction Industry)	*234910	$28.5
All Other Heavy Construction (Except Waste Disposal Plant Construction, Irrigation Systems, Sewage Treatment and Water Treatment Plants, Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental with Operator)	234990	28.5
Anchored Earth Retention Contractors (one activity of the Other Special Trade Contractors Industry)	*235810	12.0

5. NAICS 238910, Site Preparation Contractors, $12.0 Million

This is a revised industry under the Special Trade Contractors Subsector. It is comprised predominately of two Special Trade Contractors industries. In addition, the revised industry includes one activity from parts of four mining support industries, several activities from part of one heavy construction industry, and several activities from parts of two other Special Trade Contractors industries (see Table 5). Because most of the activities of the revised industry are from NAICS 1997 Special Trade Contractors industries, a $12.0 million size standard is adopted for this industry.

TABLE 5

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry)	*213112	$6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Coal Mining Industry	*213113	6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Metal Mining Industry)	*213114	6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Nonmetallic Minerals (except Fuels) Industry	*213115	6.0
Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (except cranes) with Operator (Activities of the All Other Heavy Construction Industry)	*234990	28.5
Septic Tank, Cesspool, and Dry Well Construction Contractors (Activities of the Plumbing, Heating, and Air-Conditioning Contractors Industry)	*235110	12.0
Excavation Contractors (Entire Industry)	235930	12.0
Wrecking and Demolition Contractors (Entire Industry)	235940	12.0
Dewatering Contractors, Core Drilling for Construction, and Test Drilling for Construction (Activities of the All Other Special Trade Contractors Industry)	*235990	12.0

6. NAICS 238990, All Other Specialty Trade Contractors, $12.0 Million

This industry is the same as NAICS 235990 under NAICS 1997 with a few minor changes. Several activities of the previous NAICS 1997 industry transferred to other construction industries and three activities from parts of three other industries were incorporated (see Table 6). The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $12.0 million size standard is retained.

TABLE 6

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard ($ million)
Rental of Cranes with Operator (one activity of the All Other Heavy Construction Industry)	*234990	$28.5
Residential and Commercial Asphalt, Brick, and Concrete Paving) (one activity of the Concrete Contractors Industry)	*235710	12.0
All Other Special Trade Contractors (except Indoor Swimming Pools, Earth Retention Contractors, Forming Contractors, Ornamental Metal Work, Building Equipment Contractors, Building Finishing Contractors, Dewatering Contractors, Core Drilling for Construction, and Test Boring for Construction)	*235990	12.0
Cleaning Buildings During and Immediately after Construction (one activity of the Janitorial Services Industry)	*561720	14.0

7. NAICS 516110, Internet Publishing and Broadcasting, 500 Employees

This is a new industry under NAICS 2002. It is comprised of activities related to the publishing of materials via the Internet (see Table 7). All but one of these activities had a 500 employee size standard under NAICS 1997. Therefore, 500 employees is established for this industry because it represents the most prevalent size standard for the activities within this new industry.

TABLE 7

NAICS 1997 activity	NAICS 1997 code (* = part)	Size standard
Internet Newspaper Publishers (one activity of the Newspaper Publishers Industry)	*511110	500 employees.
Internet Book Publishers (one activity of the Book Publishers Industry)	*511120	500 employees.
Internet Periodical Publishers (one activity of the Periodical Publishers Industry)	*511130	500 employees.
(Internet Directory Publishers (one activity of the Directory and Database Publishers Industry)	*511140	500 employees.
Internet Greeting Card Publishers (one activity of the Greeting Card Publishers Industry)	*511191	500 employees.
All Other Internet Publishers (activities of the All Other Publishers Industry)	*511199	500 employees.
Internet Broadcasting (one activity of the All Other Information Services Industry)	*514199	$6.0 million.

Alternatives To Adopting NAICS 2002 That SBA Considered

SBA considered retaining the NAICS 1997 codes as the basis for small business size standards. However, SBA believes that doing so will lead to inconsistency with other Federal agencies that adopt NAICS 2002 for their programs. More importantly, if SBA does not adopt NAICS 2002 it will not be able to analyze and evaluate small business size standards adequately because available Census Bureau data based on NAICS 2002 industries will not be compatible with NAICS 1997 industry data. Without useful data SBA cannot properly analyze size standards and their effects on businesses.

An alternative to not adopting NAICS 2002 as a basis for size standards is to

adopt part(s) of NAICS 2002. SBA believes this alternative is impractical because of the inherent inconsistencies that would result in using industry definitions from two systems.

Consideration of Comments

This is a direct final rule, but SBA will consider all submitted comments. SBA believes that this rule is non-controversial and routine, and SBA anticipates no adverse comments to this action. If SBA receives adverse comments, it will withdraw this direct final rule. SBA is publishing concurrently in this issue of the **Federal Register** a proposed rule to modify its Small Business Size Regulations as contemplated in this direct final rule. If SBA does receive adverse comments, it will consider the comment(s) before making a final decision. If SBA decides to adopt NAICS 2002 as proposed, or with limited modifications, it will publish a final rule which addresses the comments and explains the basis for its final decision.

Other Change

SBA is also making an administrative change to the heading of the size standards table. In the table titled ''Small Business Size Standards by NAICS Industry'' (13 CFR 121.201), SBA is removing ''N.E.C. = Not Elsewhere Classified'' from the heading. ''N.E.C.'' is not used in NAICS because NAICS contains no unclassified industries, unlike the Standard Industrial Classification system.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35.) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

OMB has determined that this rule is not a ''significant'' regulatory action for purposes of Executive Order (E.O.) 12866. This rule incorporates the latest revisions of the NAICS, which is being used by SBA to identify industries in the economy for purposes of establishing small business size standards. As discussed in the preamble, the size standard of a limited number of activities will change as a result of the NAICS revisions. Almost all businesses currently defined as small under the NAICS 1997 industries will continue to be small under the NAICS 2002 industries. The rule also affects Federal Government programs that provide a benefit for businesses. SBA welcomes comments describing the impact on small businesses of the size standard changes resulting from this rule.

Furthermore, SBA was made aware that some Federal Government programs had already begun to use, albeit improperly, the NAICS 2002 codes and assigned small business size standards to them. SBA believes that these actions indicate that Federal agencies expect to use and will readily accept the NAICS 2002 codes.

For purposes of E.O. 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

For purposes of E.O. 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or recordkeeping requirements.

When an agency promulgates a rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires the agency to prepare a regulatory flexibility analysis describing the economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. SBA has determined that this rule as drafted, including the alternatives discussed in the supplementary information above, will not have a significant impact on a substantial number of small entities. OMB's modifications are the restructuring and recategorization of the construction and wholesale trade sectors, and a small number of industries in the retail and information sectors. The modifications result in size standards changes to a minimal number of activities within certain NAICS industries detailed above in the supplementary information, with little, if any, effect on small businesses. Those activities now relate to more appropriate NAICS codes.

As part of OMB's restructuring of certain NAICS industries, a small number of specific activities within certain NAICS 1997 codes were classified within NAICS 2002 industries that have size standards different from what they had been in NAICS 1997. They are listed in Table 2, above. These activities are very specialized, and the Census Bureau does not publish data about these activities upon which to precisely assess the impact on small businesses. SBA believes that the impact on small businesses is minimal because these activities represent minor components of the NAICS 1997 industries from which they are derived. Only NAICS 235810, Water Well Drilling Contractors, is reclassified in its entirety to an industry with a different size standard, namely NAICS 237110, Water and Sewer Line and Related Structures Construction. Based on 1997 Economic Census data, there were only four water well drilling contractors out of a total of 3,795 that had annual receipts between $12.0 million and $28.5 million. SBA does not consider this number of businesses affected by a size standard change to be substantial.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends part 121 of title 13 of the Code of Federal Regulation as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403,108 Stat. 4175, 4188.

2. Amend the first sentence of § 121.101(b) to remove ''*1997*''.

3. Amend § 121.201 as follows:

a. In the table ''Small Business Size Standards by NAICS Industry,'' remove the heading ''Description (N.E.C. = Not Elsewhere Classified)'' and add in its place ''NAICS U.S. industry title''.

b. In the table ''Small Business Size Standards by NAICS Industry,'' remove the following three (3) Subsectors together with all entries within those Subsectors: Subsector 233—Building, Developing and General Contracting, Subsector 234—Heavy Construction, and Subsector 235—Special Trade Contractors, and add in their place the following:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
*	* * * * * * *	
	Subsector 236—Construction of Buildings	
236115	New Single-Family Housing Construction (except Operative Builders)	28.5
236116	New Multifamily Housing Construction (except Operative Builders)	28.5
236117	New Housing Operative Builders	28.5
236118	Residential Remodelers	28.5
236210	Industrial Building Construction	28.5
236220	Commercial and Institutional Building Construction	28.5
	Subsector 237—Heavy and Civil Engineering Construction	
237110	Water and Sewer Line and Related Structures Construction	28.5
237120	Oil and Gas Pipeline and Related Structures Construction	28.5
237130	Power and Communication Line and Related Structures Construction	28.5
237210	Land Subdivision	6.0
237310	Highway, Street, and Bridge Construction	28.5
237990	Other Heavy and Civil Engineering Construction	28.5
Except	Except Dredging and Surface Cleanup Activities [2]	17.0
	Subsector 238—Specialty Trade Contractors	
238110	Poured Concrete Foundation and Structure Contractors	12.0
238120	Structural Steel and Precast Concrete Contractors	12.0
238130	Framing Contractors	12.0
238140	Masonry Contractors	12.0
238150	Glass and Glazing Contractors	12.0
238160	Roofing Contractors	12.0
238170	Siding Contractors	12.0
238190	Other Foundation, Structure, and Building Exterior Contractors	12.0
238210	Electrical Contractors	12.0
238220	Plumbing, Heating, and Air Conditioning Contractors	12.0
238290	Other Building Equipment Contractors	12.0
238310	Drywall and Insulation Contractors	12.0
238320	Painting and Wall Covering Contractors	12.0
238330	Flooring Contractors	12.0
238340	Tile and Terrazzo Contractors	12.0
238350	Finish Carpentry Contractors	12.0
238390	Other Building Finishing Contractors	12.0
238910	Site Preparation Contractors	12.0
238990	All Other Specialty Trade Contractors	12.0
Except	Base Housing Maintenance [13]	12.0

c. In the table ''Small Business Size Standards by NAICS Industry,'' remove the following two (2) Subsectors together with all entries within those Subsectors: Subsector 421__Wholesale Trade__Durable Goods and Subsector 422__Wholesale Trade__Nondurable Goods, and add their place the following:

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
	Subsector 423—Merchant Wholesalers, Durable Goods	
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	100
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	100
42313	Tire and Tube Merchant Wholesalers	100
423140	Motor Vehicle Parts (Used) Merchant Wholesalers	100
423210	Furniture Merchant Wholesalers	100
423220	Home Furnishing Merchant Wholesalers	100
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	100
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	100
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	100
423390	Other Construction Material Merchant Wholesalers	100
423410	Photographic Equipment and Supplies Merchant Wholesalers	100
423420	Office Equipment Merchant Wholesalers	100

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	100
423440	Other Commercial Equipment Merchant Wholesalers	100
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	100
423460	Ophthalmic Goods Merchant Wholesalers	100
423490	Other Professional Equipment and Supplies Merchant Wholesalers	100
423510	Metal Service Centers and Other Metal Merchant Wholesalers	100
423520	Coal and Other Mineral and Ore Merchant Wholesalers	100
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	100
423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	100
423690	Other Electronic Parts and Equipment Merchant Wholesalers	100
423710	Hardware Merchant Wholesalers	100
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	100
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	100
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	100
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	100
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	100
423830	Industrial Machinery and Equipment Merchant Wholesalers	100
423840	Industrial Supplies Merchant Wholesalers	100
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	100
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	100
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	100
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	100
423930	Recyclable Material Merchant Wholesalers	100
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers	100
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	100
	Subsector 424—Merchant Wholesalers, Nondurable Goods	
424110	Printing and Writing Paper Merchant Wholesalers	100
424120	Stationery and Office Supplies Merchant Wholesalers	100
424130	Industrial and Personal Service Paper Merchant Wholesalers	100
424210	Drugs and Druggists' Sundries Merchant Wholesalers	100
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	100
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	100
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers	100
424340	Footwear Merchant Wholesalers	100
424410	General Line Grocery Merchant Wholesalers	100
424420	Packaged Frozen Food Merchant Wholesalers	100
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers	100
424440	Poultry and Poultry Product Merchant Wholesalers	100
424450	Confectionery Merchant Wholesalers	100
424460	Fish and Seafood Merchant Wholesalers	100
424470	Meat and Meat Product Merchant Wholesalers	100
424480	Fresh Fruit and Vegetable Merchant Wholesalers	100
424490	Other Grocery and Related Products Merchant Wholesalers	100
424510	Grain and Field Bean Merchant Wholesalers	100
424520	Livestock Merchant Wholesalers	100
424590	Other Farm Product Raw Material Merchant Wholesalers	100
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	100
424690	Other Chemical and Allied Products Merchant Wholesalers	100
424710	Petroleum Bulk Stations and Terminals	100
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	100
424810	Beer and Ale Merchant Wholesalers	100
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	100
424910	Farm Supplies Merchant Wholesalers	100
424920	Book, Periodical, and Newspaper Merchant Wholesalers	100
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	100
424940	Tobacco and Tobacco Product Merchant Wholesalers	100
424950	Paint, Varnish, and Supplies Merchant Wholesalers	100
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	100
	Subsector 425—Wholesale Electronic Markets and Agents and Brokers	
425110	Business to Business Electronic Markets	100
425120	Wholesale Trade Agents and Brokers	100

d. In the table ''Small Business Size Standards by NAICS Industry,'' remove the entry 452110, and add in its place the following:

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
452111	Department Stores (except Discount Department Stores)	$23.0
452112	Discount Department Stores	23.0

e. In the table ''Small Business Size Standards by NAICS Industry,'' remove the entry 454110, and add in its place the following:

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
454111	Electronic Shopping	$21.0
454112	Electronic Auctions	21.0
454113	Mail-Order Houses	21.0

f. In the table ''Small Business Size Standards by NAICS Industry,'' revise the heading ''Subsector 511—Publishing Industries'' to read ''Subsector 511—Publishing Industries (except internet).''

g. In the table ''Small Business Size Standards by NAICS Industry,'' in NAICS 511140 revise ''Database and Directory Publishers'' to read ''Directory and Mailing List Publishers.''

h. In the table ''Small Business Size Standards by NAICS Industry,'' remove the following two (2) Subsectors together with all entries within those Subsectors: Subsector 513—Broadcasting and Telecommunications and Subsector 514 Information Services and Data Processing Services, and add in their place the following:

NAICS codes	NAICS U.S. industry title	Size standard in number of employees or million of dollars
	Subsector 515—Broadcasting (except Internet)	
515111	Radio Networks	$6.0
515112	Radio Stations	6.0
515120	Television Broadcasting	12.0
515210	Cable and Other Subscription Programming	12.5
	Subsector 516—Internet Publishing and Broadcasting	
516110	Internet Publishing and Broadcasting	12.5
	Subsector 517—Telecommunications	
517110	Wired Telecommunications Carriers	1,500
517211	Paging	1,500
517212	Cellular and Other Wireless Telecommunications	1,500
517310	Telecommunications Resellers	1,500
517410	Satellite Telecommunications	12.5
517510	Cable and Other Program Distribution	12.5
517910	Other Telecommunications	12.5
	Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services	
518111	Internet Service Providers	21.0
518112	Web Search Portals	6.0
518210	Data Processing, Hosting, and Related Services	21.0
	Subsector 519—Information Services and Data Processing Services	
519110	News Syndicates	6.0
519120	Libraries and Archive	6.0
519190	All Other Information Services	6.0

Dated: August 5, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–20357 Filed 8–12–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–506]

RIN 2115–AA97

Security Zone: Lake Erie, Perry, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

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

DATES: This rule is effective from 10 a.m. August 1, 2002 until 10 a.m. October 1, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–506 and are available for inspection or copying at U.S. Coast Guard Marine Safety Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44114 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Following the catastrophic nature and extent of damage realized from the aircraft flown into the World Trade Center towers, this rulemaking is urgently necessary to protect the national security interests of the United States against future potential terrorists strikes against public and governmental targets. A similar attack was conducted against the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks against civilian targets may be anticipated. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to protect against the possible loss of life, injury, or damage to property.

On May 24, 2002 we published a notice of proposed rulemaking (NPRM) (67 FR 36554) giving the public the chance to comment on our proposal to make permanent a security zone adjacent to the Perry nuclear power plant. We anticipate this temporary final rule will shortly be removed by a final rule which will respond to any public comment received during the comment period for the NPRM.

Background and Purpose

A temporary security zone is necessary to ensure the security of the Perry nuclear power plant, as a result of the terrorist attacks on the United States on 11 September 2001. The security zone consists of all navigable waters of Lake Erie bound by a line drawn between the following coordinates beginning at 41° 48.187′ N, 081° 08.818′ W; due north to 41° 48.7′ N, 081° 08.818′ W; due east to 41° 48.7′ N, 081° 08.455′ W; due south to the south shore of Lake Erie at 41° 48.231′ N, 081° 08.455′ W; thence westerly following the shoreline back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Cleveland or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander and may be contacted via VHF/FM Marine Channel 16.

Regulatory Evaluation

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subject in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–506 to read as follows:

§ 165.T09–506 Security Zone; Lake Erie, Perry, OH.

(a) *Location*: The following area is a temporary security zone: all navigable waters of Lake Erie bound by a line drawn between the following coordinates beginning at 41° 48.187′ N, 081° 08.818′ W; due north to 41° 48.7′ N, 081° 08.818′ W; due east to 41° 48.7′ N, 081° 08.455′ W; due south to the south shore of Lake Erie at 41° 48.231′ N, 081° 08.455′ W; thence westerly following the shoreline back to the beginning.

(b) *Effective time and date.* This section is effective from 10 a.m. August 1, 2002 until 10 a.m. October 1, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Cleveland, or the designated on-scene representative. The designated on-scene representative will be the Patrol Commander who may be contacted on VHF–FM Channel 16.

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

Dated: August 1, 2002.

L. W. Thomas,

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

[FR Doc. 02–20479 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–207]

RIN 2115–AA97

Security Zone; Seabrook Nuclear Power Plant, Seabrook, New Hampshire

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period for the Seabrook Nuclear Power Plant, Seabrook, New Hampshire Security Zone. This change will extend the effective period of this temporary final rule until November 15, 2002, allowing adequate time to continue with informal rulemaking to develop a permanent rule. This rule will continue to close certain land and water areas in the vicinity of the Seabrook Nuclear Power Plant.

DATES: The amendment to § 165.T01–207 in this rule is effective August 13, 2002. Section 165.T01–207, added at 66 FR 67487, December 31, 2002, effective December 7, 2001 until June 15, 2002, and extended in effect until August 15, 2002 at 67 FR 30807, May 8, 2002, as amended in this rule is extended in effect until November 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Marine Safety Office Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 31, 2001, the Coast Guard published a temporary final rule (TFR) entitled ''Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire'' in the **Federal Register** (66 FR 67487). The effective period for this rule was from December 7, 2001 until June 15, 2002. The effective period for this rule was extended until August 15, 2002 in a TFR of the same title published in the **Federal Register** on May 8, 2002 (67 FR 30807). We expected the extension of the temporary rule through August 15, 2002, would have provided us enough time to complete the rulemaking process for a

permanent security zone surrounding Seabrook. Now, however, we are extending the effective period of the temporary rule until November 15, 2002, to ensure sufficient time to complete the rulemaking process, for public comment and advanced publication. Continuing the temporary rule in effect while the permanent rulemaking is in progress will ensure the security of the Seabrook Nuclear Power Plant and the maritime and surrounding communities during that period.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from waters surrounding the plant. It was anticipated that the Coast Guard would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations does exist. The Coast Guard will utilize the extended effective period of this TFR to complete notice and comment rulemaking in order to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Portland, Maine zone.

Under 5 U.S.C. 553(d)(3), we find that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the original rule were intended to prevent possible terrorist attacks against the Seabrook Nuclear Power Plant and were needed to protect the facility, persons at the facility, the public and the surrounding communities from subversive activity, sabotage or possible terrorist attacks, either from the water or by access to the facility by utilizing public trust lands between the low and high water tide lines.

The Coast Guard published a NPRM entitled ''Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire'' in the **Federal Register** on July 31, 2002 (67 FR 49643). This NPRM proposes to establish a permanent security zone that is temporarily effective under this rule.

Background and Purpose

Due to the terrorist attacks on New York City, New York and Washington DC on September 11, 2001 and continued warnings from national security and intelligence officials that future terrorist attacks are possible, heightened security measures are necessary surrounding the Seabrook Nuclear Power Plant. A temporary security zone was implemented around the Seabrook Nuclear Power Plant to protect against possible damage to the facility from subversive activity, sabotage or terrorist attacks initiated from the surrounding waters. The rule was also implemented to protect persons at the facility, the public and surrounding communities from the catastrophic impact release of nuclear radiation would have on the surrounding area, and to provide the Captain of the Port, Portland, Maine with enforcement options to deal with potential threats to the security of the plant.

There is a continuing need for the protection of the plant. The temporary security zone surrounding the plant is only effective until August 15, 2002. The Coast Guard intends to implement a permanent security zone surrounding the facility. In order to provide continuous protection to the plant until the permanent zone is promulgated, the Coast Guard is extending the effective date of the rule until November 15, 2002. This extension will permit sufficient time to implement a permanent zone through notice and comment rulemaking, while ensuring that there is no lapse in coverage of the facility.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port, Portland, Maine. These regulations were issued under authority contained in 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zone, notifications will be made to the local maritime community and signs will be posted informing the public of the boundaries of the zone.

Small Entities

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], the Coast Guard offered to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business, organization or governmental jurisdiction would be affected by this rule, and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) R. F. Pigeon, Marine Safety Office, Portland, Maine, at (207) 780–3251.

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

employees of Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Environment

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise paragraph (b) of § 165.T01—207 to read as follows:

§ 165.T01—207; Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

* * * * *

(b) *Effective period.* This section is effective from December 7, 2001 until November 15, 2002.

* * * * *

Dated: August 2, 2002.

M. P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 02–20482 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–006]

RIN 2115–AA97

Security Zone; Lake Erie, Perry, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

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

DATES: This rule is effective August 13, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–006 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44114 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 24, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Lake Erie, Perry, OH'' in the **Federal Register** (67 FR 36556). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permanent security zone established by this rule is smaller in size than the temporary security zone previously in effect. *See* 66 FR 52043

(Oct. 12, 2001) or 67 FR 39848 (June 11, 2002) for a description of the previous larger security zone. By immediately implementing the smaller zone size, we will be relieving some of the burden placed on the public by the previous larger security zone. This rule removes a temporary security zone identical to that established by this rule. The identical temporary security zone was established on August 1, 2002 after the previous larger security zone expired that date.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. National security and intelligence officials warn that future terrorists attacks are likely. This regulation establishes a permanent security zone for the Perry Nuclear Power Plant. The security zone consists of all navigable waters of Lake Erie bound by a line drawn between the following coordinates: beginning at 41° 48.187′ N, 081° 08.818′ W; due north to 41° 48.7′ N, 081° 08.818′ W; due east to 41° 48.7′ N, 081° 08.455′ W; due south to the south shore of Lake Erie at 41° 48.231′ N, 081° 08.455′ W; thence westerly following the shoreline back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Cleveland or his designated on-scene representative.

Discussion of Comments and Changes

No comments were received and no changes are being made from the proposed rule in this final rule.

Regulatory Evaluation

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No comments or questions were received from any small businesses.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

§ 165.T09–506 [Removed]

2. Remove § 165.T09–506

3. Add § 165.912 to read as follows:

§ 165.912 Security Zone; Lake Erie, Perry, OH.

(a) *Location:* The following area is a security zone: all navigable waters of Lake Erie bounded by a line drawn between the following coordinates beginning at 41° 48.187′ N, 081° 08.818′ W; then due north to 41° 48.7′ N, 081° 08.818′ W; then due east to 41° 48.7′ N, 081° 08.455′ W; then due south to the south shore of Lake Erie at 41° 48.231′ N, 081° 08.455′ W; thence westerly following the shoreline back to the beginning (NAD 83).

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Cleveland, or the designated on-scene representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: July 31, 2002.

L. W. Thomas,

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

[FR Doc. 02–20483 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA246–0353a; FRL–7254–8]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District, Ventura County 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 South Coast Air Quality Management District (SCAQMD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from miscellaneous metal parts coating, aerospace assembly and component manufacture and coating, pleasure craft coating and boatyard operations, and resin manufacturing. 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 rule is effective on October 15, 2002 without further notice, unless EPA receives adverse comments by September 12, 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;

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765; and,

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA, 93993.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

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 #	Rule title	Adopted	Submitted
SCAQMD	1141	Control of Volatile Organic Compound Emissions From Resin Manufacturing	11/17/00	03/14/01
SCAQMD	1124	Aerospace Assembly and Component Manufacturing Operations	09/21/01	01/22/02
SCAQMD	1107	Coating of Miscellaneous Metal Parts and Products	11/19/01	03/15/02
VCAPCD	74.24.1	Pleasure Craft Coating and Commercial Boatyard Operations	01/08/02	03/15/02

We determined these rule submittals met the completeness criteria in 40 CFR part 51 Appendix V on the following dates: Rule 1141, May 25, 2001; Rule 1124, February 27, 2002; Rule 1107, May 7, 2002; and, Rule 74.24.1, May 7,

2002. These completeness criteria must be met before formal EPA review can begin.

B. Are There Other Versions of These Rules?

We approved versions of these rules into the SIP on the dates listed: SCAQMD Rule 1141, December 20, 1993; SCAQMD Rule 1124, August 1, 1998; SCAQMD Rule 1107, February 12, 2002; and, VCAPCD Rule 74.24.1, August 31, 1999. Between these SIP incorporations and today, CARB has made no intervening submittals of these rules.

C. What Is the Purpose of the Submitted Rule Revisions?

SCAQMD Rule 1141 specifies process and manufacturing requirements for resin manufacturers designed to reduce VOC emissions. These processes include resin manufacturing by continuous polystyrene process, a liquid phase high density polyethylene slurry, and a liquid phase polypropylene process. SCAQMD made the following revisions to Rule 1141:

- The definitions of Exempt Compound and VOCs are deleted and replaced with a reference to Rule 102—Definition of Terms;
- An alternative for monthly recordkeeping is added if the resin manufacturing operations are not subject to a daily production limit or daily VOC limit within any other rule or permit; and,
- A usage cut-off exemption is added providing for a monthly limit of 220 pounds of VOC per month should a facility keep monthly records.

SCAQMD Rule 1124 is a rule designed to reduce VOC emissions at industrial sites engaged in the assembly and manufacture of aerospace components for aircraft and space vehicles. Rule 1124's requirements apply to maskant applicators, aircraft refinishers, aircraft fastener manufacturers, aircraft operators, and aircraft maintenance and service facilities. The revisions SCAQMD made to Rule 1124 are listed below.

- An additional year is allowed for the 250 gr/l emission limit for adhesive bonding primers to become effective in 1/1/03.
- Adhesive bonding primers used in remanufactured parts will remain indefinitely at 805 gr/l instead of lowered to 250 gr/l as in the 1998 SIP rule.
- Adhesion promotors are reinstated at an 850 gr/l limit and dropping to 250 gr/l in 2005.
- The exemption for rubber solution fuel tank coatings is extended from 1/01/02 to 1/01/05.
- The emissions limit for antichafe coatings is reduced from 600 gr/l to 420 gr/l, effective 3/01/02.
- The emissions limit for fire resistant coating used in military applications is reduced from 970 gr/l to 800 gr/l, effective 3/01/02.
- The emissions limit for extrudable, brushable, and rollable sealants is reduced from 600 gr/l to 280 gr/l, effective 3/01/02.
- A specialty category for mold release coatings is added with an emissions limit of 750 gr/l.
- Finally, the emissions limit for Type II chemical milling maskants is reduced from 250 gr/l to 160 gr/l, effective 3/01/02.

SCAQMD Rule 1107 is a rule designed to reduce VOC emissions at industrial sites engaged in metal coating operations. VOCs are emitted during the preparation and coating of the metal parts, as well as the drying phase of the coating process. Listed below are the significant revisions that SCAQMD made to Rule 1107. Other minor revisions are listed in the TSD.

- A limited exemption for electrocoatings with a 450 gram/liter VOC content. These coatings are further limited by use to 66 gallons per month. Additional definitions were added to facilitate this amendment.
- The applicability statement has been amended to distinguish Rule 1107 from Rule 1113—Architectural Coatings.
- Test methods were added to determine the acid content of pretreatment primers and etching filters, to quantify the weight percent of elemental aluminum metal coatings and the metal content for metals other than aluminum in coatings, and to determine low concentration non-ethane organic compound emissions.
- Finally, several expired compliance dates were deleted.

VCAPCD Rule 74.24.1 is a rule designed to reduce VOC emissions at industrial sites engaged in manufacturing or repairing vessels in commercial boatyards. Most of these vessels are operated, leased, rented, or chartered to a person or business for recreational purposes. VOCs are emitted during the preparation, repair, and coating of vessels, as well as the drying phase of the coating process.

VCAPCD amendments to Rule 74.24.1 included the changes described below.

- The emissions limit for antifoulant coatings was raised from 330 grams per liter (gr/l) to 400 gr/l.
- The emissions limit for two-component topcoats was raised from 490 gr/l to 650 gr/l.
- New spray gun cleaning requirements were added to the rule.
- Low vapor pressure cleaning solvent requirements for spray gun cleaning and general clean up were added to the rule.
- Test methods were added for determining composite vapor pressure and active and passive solvent losses from spray gun cleaning.
- Finally, definitions were added to facilitate the new spray gun cleaning and solvent requirements.

Each of the subject 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 Clean Air Act (CAA or 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 SCAQMD and VCAPCD regulate an ozone nonattainment area (see 40 CFR part 81), so each of these rules must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently are listed below.

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. ''Control of Volatile Organic Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations,'' USEPA, 1997, EPA–453/R–97–004, and subsequent revisions.

4. ''Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products,'' USEPA, June 1978, EPA–450/2–78–015.

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 revisions to each rule will be reviewed particularly concerning SIP relaxations.

With Rule 1141 and similar rules, SCAQMD staff did several studies to examine the probable emissions effects of amending the recordkeeping threshold. These studies examined the overall emission effects and 1141 rule-related effects of a change in recordkeeping requirements. The concern was whether or not a facility would change its daily activities and resulting emission patterns when allowed a monthly recordkeeping regime as opposed to a daily requirement. From the results of the overall study, it appeared that average daily usage did not change under either recordkeeping regime. Also, SCAQMD found that there would be no change in either overall, or daily VOC emissions for the resin manufacturers due to adding the monthly recordkeeping option. The requirements of the rule do not change regardless of the recordkeeping option chosen.

The exemption for 220 pounds of VOC per calendar month is an extension of the size-cutoff of 10 pounds per day. It is unlikely that a manufacturing firm would so significantly increase its operations and resulting emissions as to idle its plant for most of a month while operating under a 220 pound emissions cap related to recordkeeping. SCAQMD's study found that 35 of 40 resin manufacturing firms in the South Coast did not qualify for either the daily or monthly exemption. The remaining 5 firms were already exempt from the rule. Therefore, adding a monthly size-cutoff for recordkeeping would not allow sources to avoid regulation. To conclude, the submitted Rule 1141 does not interfere with reasonable further progress or attainment. We do not expect either the daily pattern of emissions, or the number of exempt sources to increase.

Concerning Rule 1124, SCAQMD staff calculated the net effect on VOC emissions of the amendments to the rule. Initial foregone emission reductions are estimated to be 48 pounds per day. By 2005, when all lower emissions limits take effect, the amount of foregone emissions reductions is estimated to be 12 pounds per day. Compared to an estimated annual average VOC emissions of 5211 pounds per day for the aerospace source category, these foregone emission reductions amount to an increase of 0.23%. Furthermore, an added 12 pounds/day is unlikely to interfere with RFP or attainment of the NAAQS when considered against the 323 tons per day of VOC emissions that would be allowed under the current SIP approved attainment plan. In conclusion, EPA has determined that 12 pounds per day are unlikely to interfere with reasonable further progress or attainment.

Prior to amending Rule 1107, SCAQMD staff compared a 3 pounds (lb) of VOC/gallon coating, the SIP-approved rule VOC content, applied with existing conventional techniques, with using a 3.75 lb VOC/gallon coating applied using electrophoresis. Because of the higher transfer efficiency and the thinner applied coating thickness, the electrophoresis coating technique resulted in less VOC emissions when coating the same surface area. At this time, the exemption for electrophoresis coating techniques is used by a single source. To conclude, the Rule 1107 will not interfere with reasonable further progress or attainment. Net emissions are expected to decrease slightly given the different application methodology.

When considering the revisions to Rule 74.24.1, VCAPCD staff estimated that the new spray gun cleaning and low vapor pressure solvent requirements will offset the two relaxed emission limits by 1000 pounds per year. The rule relaxations for anti-foulant and two component topcoats will result in an increase of 900 pounds per year. This estimate is based on actual coating use and permit limits for the four boatyards affected by the rule. New spray gun cleaning and low vapor pressure cleaning solvent use are expected to reduce emissions by 1900 pounds per year. To conclude, the submitted Rule 74.24.1 does not interfere with reasonable further progress or attainment. The net effect of amendments to the rule is to reduce ROC emissions.

The subject TSD has more information on our evaluation of each rule.

C. EPA Recommendations To Further Improve the Rules

The TSDs for SCAQMD Rules 1141 and 1124 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 September 12, 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 October 15, 2002. This will incorporate these rules into the federally enforceable SIP.

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

III. Background Information

A. 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.

TABLE 2—OZONE NONATTAINMENT MILESTONES

Date	Event
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 this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

The Congressional Review Act, 5 U.S.C. section 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. section 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 October 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2002.

Keith Takata,

Associate 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 revising paragraph (c)(286) introductory text, and by adding paragraphs (c)(286)(i)(A)(*3*), (c)(293)(i)(A)(*2*), (c)(297)(i)(A)(*3*) and (c)(297)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(286) New and amended regulations for the following APCDs were submitted on March 14, 2001 by Governor's designee.

(i) * * *

(A) * * *

(*3*) Rule 1141 adopted on July 8, 1983, and amended on November 17, 2000.

* * * * *

(293) * * *

(i) * * *

(A) * * *

(*2*) Rule 1124 adopted on July 6, 1979, and amended on September 21, 2001.

* * * * *

(297) * * *

(i) * * *

(A) * * *

(*3*) Rule 74.24.1 adopted on November 10, 1998, and amended on January 8, 2002.

* * * * *

(C) South Coast Air Quality Management District.

(*1*) Rule 1107 adopted on June 1, 1979, and amended on November 9, 2001.

* * * * *

[FR Doc. 02–20349 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 143–1a; FRL–7249–4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 5, 2002, the Indiana Department of Environmental Management (IDEM) submitted revisions to the Indiana Administrative Code (IAC) for approval into the Indiana State Implementation Plan (SIP). IDEM amended this submittal in a letter dated May 3, 2002. This regulatory update changes rule language concerning Indiana's permitting programs. Included in this submittal is a provision to assure that applicable requirements exist independently of title V permits. EPA is approving the rule language in this submittal because it is consistent with EPA's regulations governing state permit programs.

DATES: This direct final rule is effective October 15, 2002 without further notice unless EPA receives adverse comments in writing by September 12, 2002. If adverse comment is received, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to Ms. Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Attention: Mr. Sam Portanova, at the EPA Region 5 office listed below. Copies of the state's submittal and other supporting information used in developing this direct final rule are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604. Please contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number: (312) 886–3189, E-Mail Address: *portanova.sam@epa.gov.*

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is being addressed in this document?
What are the program changes that EPA is approving?
What is involved in this final action?

What Is Being Addressed in This Document?

On March 5, 2002, IDEM submitted regulatory provisions for approval into the state SIP. IDEM amended this submittal on May 3, 2002. This submittal includes 326 IAC 2–1.1–9.5 which is related to the implementation of Indiana's air permit programs. In today's action, EPA approves the submitted rule language into the Indiana SIP.

What Are the Program Changes That EPA Is Approving?

Indiana's construction permits expire upon issuance of a valid title V permit. Title V requires, however, that applicable requirements exist independently of title V permits. Prior to the adoption of 326 IAC 2–1.1–9.5, Indiana's rules did not assure that construction permit conditions exist independently of title V permits. Therefore, this issue was identified as not meeting the program approval requirements of title V and 40 CFR part 70 in a notice of program deficiency (NOD) for the Indiana title V program published in the December 11, 2001 **Federal Register** (66 FR 64039).

Indiana revised the state regulations in 326 IAC 2–1.1–9.5 to say that ''any condition established in a permit issued pursuant to a permitting program approved into the state implementation plan shall remain in effect until: (1) The condition is modified in a subsequent permit action; or (2) the emission unit to which the condition pertains permanently ceases operation.'' ''Subsequent permit action'' in this rule refers to a permit action taken pursuant to Indiana's construction permit authority. Since title V does not confer authority to modify existing applicable requirements, including construction permit conditions, ''subsequent permit action'' does not include permit actions taken pursuant to Indiana's title V program. In today's action, EPA approves this regulatory provision into the Indiana SIP. This approval satisfies Indiana's requirement to correct an identified title V program deficiency and resolves the issue published in the December 11, 2001 NOD.

What Is Involved in This Final Action?

EPA approves 326 IAC 2–1.1–9.5 into the Indiana SIP. The approval of this regulation resolves a deficiency issue raised in EPA's December 11, 2001 NOD of the Indiana title V program.

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 this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

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

The Congressional Review Act, 5 U.S.C. section 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. section 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 October 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action 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, Carbon Monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Dioxide, Volatile organic compounds.

Dated: June 28, 2002.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, 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.*

2. Section 52.770 is amended by adding paragraph (c)(151) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(151) On March 5, 2002, the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of revisions to the Permit Review Rules intended to add regulations to assure that construction permit conditions exist independently of title V permits. This revision took the form of an amendment to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 2–1.1–9.5 General Provisions; Term of Permit.

(i) Incorporation by reference.

(A) Indiana Administrative Code Rules 326 IAC 2–1.1–9.5. Adopted by the Indiana Air Pollution Control Board October 3, 2001. Filed with the Secretary of State December 20, 2001. Effective January 19, 2002. Published at Indiana Register, Volume 25, Number 5, February 1, 2002.

[FR Doc. 02–20345 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7258–8]

RIN 2060–AE77

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On June 14, 2002, the EPA promulgated amendments to the national emission standards for the secondary aluminum production industry as a direct final rule, along with a parallel proposal to be used as a basis for final action in the event that we received any adverse comments on the direct final amendments. Because one commenter submitted adverse comments on several of the provisions in the direct final rule, we are withdrawing the entire direct final rule. We will address the adverse comments in a subsequent final rule based on the parallel proposal published on June 14, 2002. We intend to publish the subsequent final rule as soon as possible.

DATES: As of August 13, 2002, the EPA withdraws the amendments to §§ 63.1501, 63.1505, 63.1506, 63.1510, 63.1511, 63.1515 and Appendix A to subpart RRR published at 67 FR 41118 on June 14, 2002.

ADDRESSES: Docket number A–2002–05, containing supporting information used in the development of this notice, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102T), 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. John Schaefer, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0296, facsimile number (919) 541–5600, electronic mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: On June 14, 2002, we published a direct final rule (67 FR 41118) and a parallel proposed rule (67 FR 41136) to amend the national emission standards for secondary aluminum production (40 CFR part 63, subpart RRR). The amendments were the result of settlement agreements which we executed in two cases which were brought seeking judicial review of the subpart RRR. The intent of the amendments in the direct final rule was to eliminate confusion and to clarify various compliance dates in the promulgated standard, to encourage early performance tests, and to resolve some basic applicability questions being addressed in a separate rulemaking before the compliance date for certain new sources.

We stated in the preamble to the direct final rule and parallel proposal that if we received significant material adverse comment by July 15, 2002, on

one or more distinct provisions of the direct final rule, we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment. We subsequently received from one commenter adverse comments on six of the amendments:

• § 63.1501(c), which deferred the compliance date for new and reconstructed affected sources which are located at existing aluminum die casting, foundry, or extrusion facilities; and

• § 63.1505(c),(d),(e),(f), and (k), which deferred the compliance date for thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, sweat furnaces and secondary aluminum processing units from the date on which performance testing was completed until the compliance date specified in § 63.1501.

In light of the relationship between the sections which were commented on and some of the remaining amendments, and to avoid the possibility of confusion resulting from partial adoption of the amendments, we have decided to withdraw all amendments contained in the direct final rule. Accordingly, all amendments in the direct final rule are withdrawn as of August 13, 2002. We recognize the potential disruptive effect of this withdrawal action on affected facilities. Therefore, after considering the adverse comments, we intend to take final action on the accompanying proposed rule as soon as possible. We will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 63

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

Dated: August 7, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–20448 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 260

[FRL–7257–7]

Exclusion from the Definition of Solid Waste; Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today granting a variance from EPA's hazardous waste requirements for certain materials reclaimed by the World Resources Company (WRC) from metal-bearing sludges. This action responds to a petition submitted by WRC requesting that the Agency exclude from the definition of solid waste under the Resource Conservation and Recovery Act (RCRA) its concentrate material that is partially reclaimed from metal-bearing sludges and sold to smelters. In response to the petition, EPA published a **Federal Register** notice proposing to grant the variance on December 9, 1999 (64 FR 68968).

EFFECTIVE DATE: This variance is effective August 13, 2002.

ADDRESSES: Supporting materials for this variance are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2002–WRCF–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, we recommend making an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket without charge. Additional copies cost $0.15 per page. The docket index and some supporting materials are available electronically. For information on accessing them, see the beginning of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund/EPCRA/UST Call Center at (800) 424–9346 (toll free) or TDD (800) 553–7672 (hearing impaired). In the Washington, D.C. metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this rulemaking, contact Ms. Marilyn Goode, U.S. Environmental Protection Agency, MC 5304W, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308–8800, electronic mail: *goode.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION: The index to the docket record and some supporting documents for this proposal are available on the Internet. Follow these instructions to access the information electronically: *http://www.epa.gov/epaoswer/hazwaste/id/index/htm*.

The official record for this action will be kept in paper form. The official record is the paper record maintained at the RCRA Information Center, also referred to as the Docket, at the address provided in the **ADDRESSES** section at the beginning of this document.

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I. Background

A. Authority

Under 40 CFR 260.30(c), facilities may petition EPA to exclude from the definition of solid waste material that has been reclaimed but must be reclaimed further before recovery is complete. To qualify for the exclusion, the material resulting from initial reclamation must be commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). Petitioners must provide sufficient information to EPA to allow the Agency to make a determination that the material is not a solid waste, pursuant to criteria set forth at 40 CFR 260.31(c).

B. Summary of Petition

Pursuant to 40 CFR 260.30(c), WRC submitted to EPA a petition for a variance from classification as solid waste for metal-rich concentrate material produced at its facility in Phoenix, Arizona. WRC produces the concentrate primarily from sludges generated by electroplating operations. The sludges are rich in metals, and are generally classifed as hazardous wastes. WRC then sells the partially reclaimed material to primary smelters for metals extraction. Currently, the partially reclaimed material produced at the Phoenix facility is fully regulated as hazardous waste, must be managed and sold as hazardous waste, and off-site shipments must be accompanied by a hazardous waste manifest. In support of its variance application, WRC provided data and information in its application about each of the factors listed in 40 CFR 260.31(c).

1. Applicability of the Variance

At its Phoenix facility, WRC principally reclaims wastewater treatment sludges (F006) received from generators who conduct electroplating and metal finishing operations. From

these sludges, WRC ''produces'' a metal-rich concentrate material. In addition, the facility also receives and partly reclaims hazardous wastes listed as F019 (wastewater treatment sludges from chemical conversion coating of aluminum) and D004 through D011 (characteristic hazardous wastes). WRC's petition, and the proposed exclusion addressed in this notice, pertain only to the metal-bearing sludges listed as hazardous wastes F006 and F019 and partially reclaimed at WRC's Phoenix, Arizona facility. Other hazardous wastes managed by WRC at its Arizona facility and all hazardous wastes managed at other WRC facilities are not addressed in this decision and must continue to be managed as solid and/or hazardous wastes in accordance with all applicable RCRA regulatory requirements.

The Agency notes that sludges that are hazardous only because they exhibit a characteristic of hazardous waste that are reclaimed are currently excluded from classification as solid waste pursuant to 40 CFR 261.2(c)(3). Therefore, sludges that are reclaimed by WRC and designated as hazardous wastes D004 through D011 are not solid wastes. In addition, if these characteristic sludges are mixed with the listed metal-bearing sludges covered by the variance prior to or during the reclamation process at WRC's Phoenix facility, the mixture will not be classified as a solid waste provided the mixture is sent off-site for further reclamation and is handled in accordance with all the conditions of this variance.

2. Description of WRC's Partial Reclamation Process

Operations at WRC's Phoenix facility are governed by a Consent Agreement and Consent Order (CA/CO) executed by EPA Region IX, WRC, and the Arizona Department of Environmental Quality, hereafter referred to as ''ADEQ'' (*see* In the Matter of World Resources Company, EPA I.D. No. AZD980735500, United States Environmental Protection Agency, Region IX, September 3, 1996). The CA/CO includes a requirement to submit an application for a treatment and storage permit to ADEQ. At the Arizona facility, WRC accepts F006 raw material (as well as other metal-bearing sludges) that it judges to be acceptable for recycling based on laboratory and process testing of generated sludges. WRC prepares a waste profile for the wastestreams received from each generator, which includes physical descriptions and constituent content. The material is unloaded, examined, and sampled on receiving pads in a processing enclosure. WRC dries the received waste through evaporative processes. The material is spread out in a controlled area, mechanically furrowed, and periodically rotor-tilled to facilitate drying. The physical characteristics of the material changes from a wet cohesive nonfree-flowing mass into a granular free-flowing form. The moisture content of the F006 received is reduced by one-half. The entire processing area is located on a concrete pad which covers several acres, with a compacted native soil and flexible membrane liner underneath the pad.

The F006 is then blended by mechanical mixing with other waste streams received from various generators to achieve concentrates that meet the contractual specifications (e.g, recoverable metals contents) of its customers. Other than water, WRC neither adds any materials to, nor removes any materials from the F006 and F019 metal-bearing sludges that it receives from generators and processes. The resulting concentrate contains metal hydroxides and oxides of iron, aluminum and magnesium. WRC markets the concentrates as copper, nickel, and tin concentrates to smelters that recover various metals contained in these concentrates.

II. Summary of the Agency's Final Decision

For the reasons described below in our response to public comments, the Agency is today conditionally granting the petitioner's (WRC's) request for a variance from classification as solid waste for the metal concentrate partially reclaimed from materials listed as hazardous waste F006 and F019 received at its Arizona facility, which are sold to metal smelters after being partially reclaimed by WRC. The variance is granted subject to conditions that are very similar to those proposed in the **Federal Register** on December 9, 1999 (64 FR 68968), namely:

(1) Metal-bearing sludges F006 and F019 accepted by the facility from off-site and used in the production of the partially reclaimed concentrate materials must have a metals concentration level of no less than two percent on a dry weight basis, or an equivalent economic value in precious metals (e.g., gold, silver, platinum, or palladium). In addition, the facility may only process two shipments of listed sludge materials that do not meet the two percent metals concentration level from a single generator within a 14-day time period before taking action to ensure that subsequent shipments will meet the minimum metal content. Specifically, WRC may not accept more than one non-conforming shipment from a generator, unless the second non-conforming shipment is received within 14 days following the first event. Thereafter, WRC may not accept additional materials from that generator until WRC determines that the generator's subsequent sludge shipments will meet the minimum metal content requirements of this condition.

(2) WRC shall provide to ADEQ an annual audit, performed by an independent third party mutually acceptable to WRC and ADEQ, to be completed within the six months following the end of each calendar year. The scope of the annual audit will cover WRC's concentrate shipments during the year to certify that all shipments were: (1) Made to metal smelting facilities; (2) documented and shipped in accordance with all applicable U.S. Department of Transportation regulations; and (3) documented to have reached the designated destination.

(3) The partially reclaimed concentrate materials must have a concentration of no greater than 590 ppm total cyanide. Cyanide must be analyzed using method 9010 or 9012 found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

(4) WRC must send a one-time notification of the variance and its conditions to any foreign country where metal smelters accepting WRC concentrate are located. In addition, WRC must include on its Material Safety Data Sheet shipped with the concentrate a notification that the concentrate may contain up to 590 ppm cyanide and that low pH environments can result in the production of hydrogen cyanide gas.

(5) To ensure that its customers handle the processed concentrates as valuable commodities in a manner that minimizes loss, WRC must place a provision stipulating no land placement of the materials in its contractual agreements with smelting facilities.

(6) This conditional variance from classification as solid waste for the metal concentrate reclaimed from listed hazardous wastes F006 and F019 at WRC's Phoenix, Arizona facility takes effect at the point at which the concentrate is loaded for shipment. This conditional variance does not affect the regulatory status of any other hazardous wastes handled by WRC at the Phoenix facility. In addition, the variance does

not apply to or affect the regulatory status of any wastes managed at any other WRC facility.

III. Response to Public Comments on the Proposed Variance

40 CFR 260.30 provides that the EPA Administrator may grant a variance from the classification of solid waste, on a case-by-case basis, for materials that have been reclaimed but must be reclaimed further before recovery is completed. Such a variance generally is contingent upon the material resulting from the initial reclamation being ''commodity-like.'' When this variance is effective, the concentrates partially reclaimed from metal-bearing sludges F006 and F019 that are shipped to smelters may travel without a hazardous waste manifest and will not be subject to any RCRA controls other than the conditions of this variance (listed above in this notice). Incoming hazardous waste received by WRC at the Phoenix facility is not covered by the variance and must be manifested and managed as a hazardous waste until shipped to smelters for further reclamation.

EPA's rules at 40 CFR 260.31(c) specifies five criteria for evaluating whether a specific material qualifies for a ''partially reclaimed material'' variance from the definition of solid waste. In addition, 40 CFR 260.31(c)(6) also allows EPA to consider ''other relevant factors'' when determining whether or not to grant a requested variance for materials that have been partially reclaimed. The criteria of 40 CFR 260.31(c) do not constitute separate legal thresholds, each of which must be met before EPA can grant a variance under this regulatory provision. Instead, EPA must consider all the criteria in their totality to determine whether the partially reclaimed concentrate is ''commodity-like''. A strong demonstration that several criteria have been met may outweigh the fact that an applicant is weak in another area. Weighing all of the factors together, EPA has concluded that WRC's processed concentrates are more commodity-like than waste-like, and that it is reasonable to grant the variance.

This section sets out EPA's findings, describes the principal comments concerning these findings, and gives EPA's responses to these comments. All other comments, and the Agency's responses, may be found in the record for this rulemaking (*see* RCRA Docket Number F–2002–WRCF–FFFFF).

A. Degree of Processing

The first evaluation criterion (40 CFR 260.31(c)(1)) is the degree of processing a material has undergone and the degree of further processing that is required for the material to be rendered ''commodity-like.'' Materials that have undergone substantial processing to reclaim valuable or recyclable materials (but still must undergo a degree of further processing) generally satisfy this criterion. Materials that are still substantially ''waste-like'' and that need a significant degree of further processing or ''treatment'' to be rendered ''commodity-like'' may not satisfy the evaluation criterion.

One commenter stated that the greater part of the processing is accomplished at the smelter rather than at the WRC facility and that WRC therefore does not meet the criteria for the variance. EPA agrees that this processing is not technically complicated. As discussed below, however, WRC has a sophisticated quality control program which allows it to blend sludges to meet smelter specifications. In fact, WRC has made a very strong showing that its processing adds substantial economic value to electroplating sludges. It takes in a material that has little or no market value (electroplaters pay WRC to take their sludges) and converts it into a material that smelters will buy (see the discussion of economic value in the following section of this notice). WRC also made a strong showing that it meets the fourth criterion, relating to a guaranteed end market for its reclaimed material. Weighing all the factors together, EPA has concluded that the amount of processing performed by WRC is sufficient to meet this criterion.

Another commenter said that evaporation and blending represent the most minimal form of waste handling and should not be interpreted to constitute significant value-added processing. This commenter stated that any electroplater would be able to obtain a variance for hazardous waste that has been evaporated in a 90-day or other exempt unit, and any smelter would be able to accept it. Another commenter speculated that other 90-day generators would dewater other wastes and claim partially-reclaimed variances.

EPA does not agree that any electroplater would be able to obtain a variance to dry sludges in onsite units. Although WRC's mechanical methods for sludge drying and blending may be technically simple, the company has a sophisticated quality control program used to ensure that the sludge from each generator meets contract specifications, and that the partially reclaimed material has also been formulated to meet purchaser specifications. The process involves a chemical analysis laboratory program and computer software programs which yield over 200,000 test results yearly to provide needed operational information to control WRC's recycling activities. These specifications and analyses also played a role in EPA's decision that the sludges undergo meaningful processing at WRC. EPA would not be likely to grant variances to electroplaters or other waste generators who could not show similarly strong indicators that they engaged in significant processing to create ''commodities.''

One commenter stated that using the value of services to generators as a measure for determining the degree of processing of a waste material does not appear in any regulation and is not discussed in any of the Agency's correspondence or guidance on this subject.

EPA did not consider the value of services that WRC provides to generators in its evaluation of this criterion. Although WRC urged EPA to take into account the amount of money it spends to process each ton of sludge, and although it is true that WRC does derive some of its profit from fees paid by generators, EPA's decision is based on the fact that WRC's activities make its concentrate marketable to smelters as discussed elsewhere in this notice (see section B below).

B. Economic Value of Material That Has Been Reclaimed

The second evaluation criterion (§ 260.31(c)(2)) requires an evaluation of the economic value of the material that has been reclaimed, but must be further reclaimed. This criterion is also useful in determining whether a material is indeed ''commodity-like.'' To satisfy this criterion, petitioners must demonstrate that the initial reclamation process increases or contributes to the value of the material and that there is a market for the reclaimed material. Petitioners generally can demonstrate that this factor is met by providing sales information, including quantities of the material sold, additional demand for the material (if any), and the price paid for the material by purchasers.

In the proposal, EPA stated that the processed concentrate that WRC produces has positive economic value and is purchased by smelters. EPA based this conclusion primarily on sales data provided by WRC for January 1994–June 1995. EPA found that this data showed that WRC in fact sold its partially reclaimed material to smelters and received a positive economic value (taking into account average transportation costs).

One commenter stated that WRC and EPA have mis-characterized the ''economic value'' of the concentrate.

This commenter asserted that the true economic value of metal-bearing sludges is determined by the value of the metals in the material at a given time, not by how much is spent to process the material or how much the processor charges for the material. The commenter asserted that, on this basis, WRC's process adds no value, because the amount of the metals in the sludges does not change.

EPA agrees that the presence of the valuable metals in metal-bearing sludges is one factor to be used in determining whether WRC's partially reclaimed concentrate is commodity-like. However, EPA does not agree that WRC must increase the amount of metal to add value to the materials that it processes. There are other ways to make these metal-bearing materials more valuable. WRC's services in aggregating sludges into larger volumes which smelters are willing to accept and in custom-blending sludges to meet specific smelter specifications add significant value. The fact that WRC is able to sell processed concentrates to smelters (while few electroplaters are able to persuade smelters to accept unprocessed sludges, and most who do have to pay smelters to accept their sludges), demonstrates that WRC's services add value.

One commenter questioned whether WRC would be able to claim positive economic value if it analyzed sales data for sludges that were reclaimed for common metals only. This commenter argued that the economic value would not be as high if only common metals were sold, instead of precious metals. Another commenter said that information in the record indicated that WRC's concentrate contained substantially lower levels of recoverable metals than virgin concentrates.

In response to these comments, Agency points out that the regulatory criteria for granting a variance under 40 CFR 260.30(c) do not require the Agency to distinguish between the common metals and precious metals contained in WRC's partially reclaimed concentrate, if in fact the concentrate contains both kinds of metals. The Agency also disagrees that recoverable levels for many metals are lower in WRC's concentrate than those found in virgin concentrate. If in some cases the levels of metals are lower, smelters are nevertheless willing to pay for the concentrates, demonstrating that they have positive economic value.

The commenter also pointed out that a significant portion of WRC's revenue comes from fees it charges generators, as opposed to the revenue received for selling its concentrate to smelters. The commenter believed that this fact is indicative of sham recycling. If the commenter means that WRC's operation is a ''sham'', the issue is not relevant to this variance. The sham recycling criteria help EPA distinguish facilities that engage in recycling that is not subject to RCRA regulation from facilities that engage in waste treatment that is subject to RCRA. WRC is not claiming that its operation is exempt from RCRA; therefore, the sham recycling criteria do not apply. Similarly, the commenter may be suggesting that smelters using WRC concentrates are engaged in waste treatment rather than recycling. EPA does not believe that the fees generators pay to WRC are relevant to the legitimacy of the smelters' processes. The argument might have relevance if WRC paid smelters to take its concentrates; however, the record shows that WRC sells its concentrates to smelters.

Finally, the commenter may be suggesting that WRC's process adds so little value to the sludges that no variance is warranted, so that WRC concentrates should continue to be regulated as hazardous wastes during transportation and during storage at smelters. EPA disagrees. Data provided by WRC show that, during 1996–1999, WRC made more money from selling concentrates to smelters than from charging fees to generators. WRC received approximately $0.59 from generator fees for every $1.00 it received in metal sales (after adjusting generator fees to eliminate charges for optional transportation services).

This commenter also stated that EPA should not have used ''average'' transportation costs in assessing whether WRC received positive economic value for its concentrate. This commenter suggested that the Agency should require recordkeeping and auditing of WRC's records to ensure that each shipment generates a return. The commenter further suggested that EPA should assess the transportation cost of a single trip for each load, any administrative activities by the smelter, and smelter processing costs. These costs should then be compared to similar costs for ''as-generated'' sludges shipped directly to smelters. The commenter also stated that EPA should determine monetary value to smelters of reducing sludge moisture content and blending sludges to meet smelter specifications.

In response to these comments, the Agency notes that it is not feasible to evaluate the profitability of each and every shipment made by WRC to smelters. Such profitability will depend on several factors, such as the concentration of metals in a particular shipment, the price of the metals at the time, and freight costs. We do not believe that the regulatory criteria at 40 CFR 260.31(c) require the Agency to examine all of these factors with respect to each shipment. For this reason, EPA instead assessed the average cost of transportation over the period covered by the variance application. We believe that such averaged costs are sufficient to help us assess the economic value of WRC's concentrate.

EPA believes that the record shows that smelters value the reduction of moisture content and the blending of sludges. Smelters will pay more for WRC's concentrates, which have undergone these steps, than they will pay for sludges marketed by electroplaters which have not been dried and blended. Contrary to the commenter's assertion, EPA does not need to determine precise values for each of these activities to make a finding on this issue.

One commenter also stated that EPA's assertion that smelters are reluctant to accept F006 sludges directly from generators is not supported in the rulemaking record, and that at least one smelter takes ''as-generated'' sludges directly from electroplaters. In response, the Agency notes that we did not intend to imply that smelters refuse to take sludges directly from electroplaters. Rather, EPA meant that WRC's concentrates are more attractive to smelters than sludges shipped directly from electroplaters. EPA believes that the concentrates are more attractive for two reasons. First, WRC's shipments are much larger than typical shipments from electroplaters. For example, in 1995 the average amount of F006 generated from an individual electroplater was 120 tons (*see* Regulatory Impact Analysis for the Final Rule for a 180-Day Accumulation Time for F006 Wastewater Treatment Sludges, USEPA, Office Of Solid Waste, January 14, 2000). During the same year, WRC processed over 16,000 tons of F006 and related wastes for metal recovery (*see* Hazardous Waste Recycling in the United States: Summary Statistics and Trends for 1993–1997, USEPA, Office of Solid Waste, June 7, 2001, p. 18). Larger shipments reduce transaction costs for smelters, and smelters will penalize for smaller lots (*see* Pollution Prevention and Control Technology for Plating Operations, George C. Cushnie Jr., 1994). They also allow for economies of scale in shipping and handling costs. Second, smelter personnel contacted by EPA indicated that they believe that WRC more consistently meets

specifications for metal content and impurities (see personal communication between Paul Borst, USEPA, Office of Solid Waste and Bob Sippel, Vice-President for Recycling, Noranda Minerals, Inc., July 22–24, 1996).

C. Degree to Which Reclaimed Material Resembles Analogous Raw Material

The third evaluation criterion (40 CFR 260.31(c)(3)) is the degree to which the reclaimed material is like an analogous raw material. The partially reclaimed material should be similar to an analogous raw material or feedstock for which the material may be substituted in a production or reclamation process. In addition, the partially reclaimed material should not contain significant concentrations of hazardous constituents not found in an analogous raw material and that do not contribute to the value of the partially reclaimed material when used for its intended purpose.

As explained in the proposal, EPA conducted an analysis comparing levels of the inorganic constituents and cyanide in the processed concentrates that WRC sells with levels of constituents in virgin ore concentrates. EPA found that, with the exception of cyanide, the levels of constituents in WRC's concentrates are generally comparable to the levels of constituents found in concentrates made from virgin ores. Also, EPA considered data showing that toxic organic constituents are not likely to be prevalent or present in more than trace amounts in F006 being recycled (*see* EPA's Metal Finishing F006 Benchmark Study, September 1998, p. 23, and letter (with attachment) from D. Daniel Chandler of Browning, Kaleczyc, Berry and Hoven to Paul Borst, USEPA, June 2, 1993)). To make WRC's concentrate more commodity-like, EPA decided to limit the levels of cyanide that could be allowed.

The 590 ppm total cyanide limit that we proposed is the current Universal Treatment Standard (UTS) for land disposal at 40 CFR 268.48 for total cyanide in hazardous wastes that are land disposed. This limit currently applies to any WRC concentrate that is stored on the land before smelting. In response to requests for clarification from two commenters, we are today stating that the limit refers to total cyanide, and we are adding the test method specified in 40 CFR 268.48.

Some commenters did not believe that the limit set for cyanide in WRC's concentrate should be 590 ppm. One commenter argued that EPA should limit cyanides to the amount present in analogous ''virgin'' sources of metals. Another argued that the cyanide limit should be risk-based, and asserted that EPA's assessment of risks did not ensure protection of human health and the environment.

This criterion is intended to help EPA distinguish materials that are waste-like from materials that are commodity-like. Where EPA finds a constituent at higher levels in the partially reclaimed, waste-derived material, it does not have to conduct a risk assessment and impose a condition based on limiting risks to human health and the environment (as demonstrated through some type of risk assessment). Rather, EPA need only ensure that the constituent levels are commodity-like.

Limiting constituent levels in the partially reclaimed material to levels in analogous virgin raw materials, as one commenter suggested, is an acceptable way to accomplish this. It is not, however, the only way. In this case, the analogous raw materials appear to have extremely low levels of cyanide. EPA is concerned that WRC might not be able to reduce cyanide levels in electroplating sludges to this level. EPA, however, is confident that WRC can meet the land disposal restriction level for cyanide, which currently applies while WRC's concentrates are classified as hazardous wastes. As previously stated, WRC makes strong showings for the second and fourth criteria of the variance, causing EPA to conclude that its concentrates are commodity-like. Under these circumstances, EPA finds the 590 ppm limit to be sufficient to ensure that WRC's concentrates are more commodity-like than waste-like.

In spite of the fact that it was not legally required, EPA conducted a screening analysis to determine whether land storage of concentrates with cyanides at this level would pose ground water risks. The analysis suggested that cyanide concentration would not exceed the federal drinking water standard for cyanide at a downgradient drinking water well if cyanide underwent hydrolysis. The screening analyis did show some potential for risk if cyanide did not hydrolize. One commenter challenged EPA's assumption that hydrolysis was likely to occur. The Agency made this assumption because the scientific literature shows that cyanide is often amenable to that process, since it tends to break down or dissociate if it comes in contact with water (*see* Kollig P. Heinz *et. al,* Environmental Fate Constants for Organic Chemicals Under Consideration for EPA's Hazardous Waste Identification Projects, Office of Research and Development, USEPA).

Moreover, the screening analysis is likely to overestimate risks for several reasons. EPA conducted the screening assuming 200 to 300 metric tons of electroplating sludge stored outdoors, even though such sludge is usually stored indoors, with reduced likelihood of releases to groundwater, and even though volumes of concentrate at a single smelter at any one time are likely to be smaller. In addition, information available to the Agency indicate that WRC's metal concentrate is unlikely to remain in storage at a smelter for a long period of time. First, the cost and efficiency of the smelting process itself are negatively affected by water content; therefore, any stored materials are used as soon as possible to avoid inadvertent moistening by rainfall. Second, under the purchasing agreement, the smelter must pay WRC by a specified time after the concentrate is received, often before the material is fully unloaded. This practice would lead the smelter to assume the risk of metal price changes if the material is not used promptly. Consequently, it is difficult to conclude that the concentrates would pose unacceptable ground water risk even if hydrolysis occurred slowly or did not occur at all.

The Agency also notes that the other conditions of this variance will protect against air inhalation risks from cyanide. For example, a Material Safety Data Sheet must accompany the concentrate with a notification that the concentrate may contain up to 590 ppm cyanide and that low pH environments can result in the production of hydrogen cyanide gas. Moreover, Department of Transportation regulations for hazardous materials will continue to apply to WRC's processed concentrates even after the RCRA exemption takes effect. In addition, the Agency notes that WRC is not seeking a variance for its own operations. Hazardous waste regulations will continue to apply to processed concentrates held at WRC's facility.

One commenter questioned the validity of EPA's assessment of groundwater risks for cyanide, noting that EPA decided not to propose an ''exit'' level for hazardous wastes containing cyanide in the proposed hazardous waste identification rule (HWIR) due to technical concerns with predicting the fate of cyanide in the environment. However, for this variance EPA did not need to conduct a risk assessment. Moreover, the technical difficulties are less important in a simple groundwater screening analysis than in the complex, multipathway analysis conducted for the HWIR rule.

Another commenter suggested that EPA should set a toxic-along-for-the-ride limit for the cyanide in incoming sludges to WRC's facility, so that WRC would not be able to dilute high incoming cyanide concentrations to achieve specified concentration levels in the outgoing concentrate.

RCRA regulations do not prohibit dilution during reclamation. While dilution is impermissible in the LDR program to avoid a treatment standard (*see* 40 CFR 268.3 generally), dilution is permissible when done to facilitate treatment (*i.e,* adding cement to stabilize waste). The type of dilution that may occur at WRC in drying and blending is analogous to that which takes place to facilitate treatment, since drying and blending makes metal concentrates smelter-ready and amenable for high temperature metal recovery. Whatever cyanide dilution takes place in WRC's blending process is incidental to the main purpose of the blending, which is to ensure that the concentrates contain sufficient metal content to assure high process efficiency and limit contaminant concentrations of tramp constituents that may interfere with the smelting process.

One commenter thought the limit for total organic hazardous constituents, including cyanides, should be 500 ppm, apparently because other organic hazardous constituents may be present in sludges received by WRC and because this value is the cutoff point for determining whether a smelter is burning solely for metal recovery, and thus eligible for an exemption to the current permitting rules for boilers and industrial furnaces (BIFs) (*see* CFR 266.100(c)(2)(i)). Another commenter believed that even the 500 ppm limit was not sufficiently protective, because it could create health risks if burning were conducted improperly, and the limit was not intended for use in a delisting or a variance.

EPA established a 500 ppm limit for total organic constituents in secondary materials burned at smelters to distinguish smelters engaged in metals recovery from smelters engaged in the treatment of hazardous organic constituents. The limit is not risk-based. Moreover, as stated earlier, EPA is not required to ensure that the concentrate will pose low risks before granting the variance. However, EPA has also found that unprocessed electoplating sludges typically contain very low levels of organics (except cyanide) that are well below the cutoff point for smelter metals recovery (*see* EPA's Metal Finishing F006 Benchmark Study, September 1998, p. 23, and letter (with attachment) from D. Daniel Chandler of Browning, Kaleczyc, Berry and Hoven to Paul Borst, USEPA, June 2, 1993)). EPA is imposing a limit for cyanide.

Two commenters stated that EPA should evaluate risks presented by all toxic constituents potentially present in the waste, just as it does when considering delisting requests. One of these commenters suggested that EPA should set a ''toxics-along-for-the-ride'' threshold level for each toxic constituent in each incoming load of sludge that WRC receives, and that any level set for toxic constituents, including cyanide, should be risk-based rather than technology-based.

In response, EPA notes that we found no need for limits on any other constituents to demonstrate that the processed concentrates are commodity-like. The relevant test is the degree to which the concentrate resembles analogous raw materials. To determine whether WRC's concentrate is similar to analogous raw materials, we compared its inorganic constituents to inorganic constituents found in primary copper and nickel concentrates. We concluded that cyanide was the sole hazardous constituent that was not present in the analogous raw material that did not contribute to the value of the WRC concentrate when sent for metals recovery. Moreover, with the exception of cyanide, the Agency concluded that the Appendix VIII metals typically contained in WRC's concentrate are similar to those found in virgin ore concentrates. In addition, we note that commercial contracts under which smelters purchase WRC's concentrate typically specify limits on several such metals (such as lead or chromium) to ensure that levels do not interfere with the extraction process. As noted above, we also found that organic constituents are not found in significant amounts in unprocessed electroplating sludges. Therefore, EPA does not need to set limits for other constituents, either to ensure that WRC's concentrates are commodity-like or to ensure that WRC does not engage in sham recycling.

Some commenters suggested that EPA should place limits on Appendix VIII metals in incoming sludges at the WRC facility, at least for those metals in high concentrations that are not recovered and have no ''ore equivalency'' levels, such as chromium, cadmium or zinc. One commenter argued that recoverable metals could also be toxics-along-for-the-ride if the receiving smelter does not in fact recover all of them.

The Agency does not believe that such a limitation is necessary to ensure that WRC's concentrates resemble virgin ores. We did not find metals that are not present in virgin ores. We note that there are Appendix VIII metals at high concentrations in the analogous primary copper and nickel concentrates which are not recovered. Arsenic levels in primary copper concentrates are often present in levels as high as 3000 ppm and are not recovered.

D. Extent to Which End Market Is Guaranteed

Under the fourth evaluation criterion (40 CFR 260.31(c)(4)), petitioners must demonstrate that an end market for the partially reclaimed material is guaranteed. Petitioners must demonstrate that there is a secure demand and long-term market for the partially reclaimed material and that the chance of large quantities of the material being stockpiled due to insufficient demand is unlikely. If a petitioner cannot demonstrate that the material enjoys a consistent level of demand, with reasonable expectations for the same or greater level of demand once a variance is granted, there may be risk of the material being stockpiled or stored for a significant period of time in containers or other storage units that do not have to meet RCRA Subtitle C storage standards. Such situations may pose significant risks to human health or the environment.

In the proposal, EPA found that WRC demonstrated that it has multi-year contracts for the sale of its processed concentrates with at least four smelters, and that these smelters have excess capacity exceeding WRC's production capabilities. The record also shows that the smelters have been customers for significant periods of time; contracts with one smelter extend back to the 1970's. Even the most recent customers have had contracts since the middle 1990's. At the same time, however, to help ensure that concentrates meet their end market, EPA proposed to require that WRC ship concentrates only to metal smelting facilities, that WRC comply with DOT regulations regarding shipments of hazardous materials, and that WRC document that all shipments reached their designated destination. To assist in ensuring compliance with these shipping conditions, EPA also proposed to require WRC to provide an annual audit to the Arizona Department of Environmental Quality (ADEQ). The annual audit, conducted by an independent third party, must certify that all shipments of WRC's partially reclaimed concentrate were made to metal smelting facilities, were documented and shipped in accordance with all applicable U.S. Department of Transportation regulations, and were documented to have reached the

designated destination. EPA is retaining these conditions for the final variance.

One commenter thought that there was insufficient information in the proposal and in EPA's supporting analyses to fully evaluate the underlying economics of WRC's business. This commenter suggested that *at a minimum* (emphasis supplied in the original comments) EPA should conduct an analysis covering the entire 17 years of WRC's operations, reviewing all contracts over this time period, the primary and secondary metals market over the same period, and any other regulatory or enforcement actions EPA or authorized states have taken with respect to F006 and F019 recycling, including all prior interpretations of the legitimacy of F006 and F019 recycling activities. In particular, the commenter stated that EPA should analyze WRC's 17 year history to determine if there had ever been a period when metals prices were so low that the concentrate could not be sold. This commenter also felt that EPA's position was weakened by the fact that WRC has contracts with foreign smelters. Another commenter expressed similar concerns about fluctuations in metal prices, fearing bankruptcies, abandonments, and ''stockpiling'' when minerals become less valuable.

In response, EPA notes that the considerable amount of data submitted by WRC and available to the Agency from other sources have provided an accurate view of the nature of F006 recycling in general and of WRC's operations in particular. This information has been sufficient to allow the Agency to evaluate whether WRC's concentrate meets the regulatory criteria of 40 CFR 260.31(c). The Agency also believes that the existence of past fluctuations in commodity prices should not be a decisive or even strong consideration in evaluating variance applications under 40 CFR 260.30(c), especially since price fluctuations for these materials tend to be the rule rather than the exception. In addition, as noted above, WRC has numerous multi-year, long-term contracts in place, indicating that WRC's processed sludges remain valuable to smelters over time, even with changes in the values of the metals they contain.

Moreover, we note that the variance does not apply to materials held at WRC prior to shipment. Storage there must comply with Subtitle C requirements. These requirements adequately address threats posed by materials ''stockpiled'' at WRC. With regard to the risks that a smelter might accept a shipment, but stockpile it at the smelting facility during a ''down'' market, we note that these materials are blended to specific smelter specifications, and smelters pay to receive them (often before the materials are processed). It therefore seems more likely that smelters will use them rather than store them for extended periods of time. These considerations are true for both domestic and foreign smelters.

The Agency notes that in the proposal, the introductory paragraph to the variance language included a reference to metal concentrate sold to ''smelters or other metal recovery facilities'', although the proposed numbered variance conditions referred only to ''smelters'' (see 64 FR 68968 at 68972). Today's final notice limits the variance to WRC's metal concentrate that is sold to smelters, since the available data submitted in support of the variance concerns sales to smelters rather than to other kinds of facilities.

One commenter opposed the requirement for an independent annual audit as an unnecessary expense and believed a statement signed by WRC would suffice. Two commenters believed that the audit should contain additional requirements, such as recordkeeping and evaluations of the management of WRC's concentrate at smelters, and one commenter suggested an audit every four months during the first two years. Some commenters were concerned that an independent audit would replace the role of a regulatory agency inspection.

In response to these comments, EPA notes that the conditions of all variances under 40 CFR 260.30 are site-specific in nature. This audit was proposed as a mutual agreement between ADEQ and WRC to satisfy both parties' concerns about compliance with the terms of the variance. An independent annual audit ensures an objective review of the company's operations, and provides information on how the material is handled after partial reclamation. However, the fact that an audit is required as a condition of this variance does not mean that similar audits would be considered appropriate for all such variances. The Agency does not believe that the additional requirements for increased recordkeeping, evaluation at smelters, and more frequent review suggested by some commenters are necessary to help regulators determine whether WRC has complied with these variance conditions. EPA also notes that nothing in this variance would legally affect or preclude inspections or review of WRC's operations by the regulatory authority. The State or EPA Region can conduct the number of inspections and reviews it believes necessary to ascertain compliance with conditions of the variance, as well as compliance with other RCRA requirements applicable to the facility.

E. Handling To Minimize Loss

The fifth evaluation criterion (40 CFR 260.31(c)(5)) concerns the extent to which the partially reclaimed material is handled to minimize loss. Petitioners must demonstrate that the material is handled as if it were a valuable commodity and in a manner that is protective of human health and the environment.

In the proposal, EPA stated that the value of the concentrates and the contracts between WRC and both generators and smelters provide incentives for WRC to manage both the unprocessed sludges and the processed concentrates to prevent loss. EPA also noted that the processed concentrates will remain subject to Subtitle C storage regulations while held at WRC prior to shipment, because the variance will not take effect until the concentrates are loaded for shipment. Even after the RCRA variance takes effect, the concentrates will remain subject to DOT regulations for hazardous substances during shipment to smelters. The smelters' payments for the concentrates show that the smelters value them and have incentives to manage them carefully. The custom blending for each shipment also makes it more likely that smelters will value the concentrates and handle them appropriately.

EPA, however, also proposed to impose a condition that prohibits land placement of WRC's concentrates because land storage has a high potential for loss, and because EPA does not believe that analogous concentrates derived from virgin materials are stored on the land. EPA also proposed to ensure that smelters received notice of this limitation by requiring WRC to re-state the condition in all contracts with smelters. In our proposal, EPA described this limit in its discussion of the third criterion, the extent to which constituents in the partially reclaimed material resemble constituents in the analogous raw material. EPA is clarifying here that we are imposing this condition to ensure that WRC's customers handle the exempt material in a manner that will minimize loss.

One commenter claimed that WRC's assertions that smelters handle concentrates to minimize loss are not a sufficient basis for EPA to make a conclusion about smelters' operations. EPA, however, is not basing its finding on this criterion on these assertions. Rather, EPA has independently evaluated the factors that would influence smelters' handling of these

materials, and concluded that the smelter payments, WRC's custom blending activities, and the risks to the smelters from prolonged storage make it likely that smelters will minimize losses. Moreover, the Agency is imposing a condition which provides that concentrates stored on the land will not be excluded under the variance.

One commenter suggested that contracts between WRC and smelters could not be directly enforced by WRC, and that the Agency should therefore condition the variance on enforcement agreements between the smelters and ADEQ. EPA does not agree that enforcement agreements of the type suggested by the commenter are necessary to prevent land storage at smelters. The variance clearly makes land storage a violation of the variance conditions. Concentrates stored on the land would not be excluded from the definition of solid waste, and EPA and the State could take enforcement action if the storage did not comply with all applicable Subtitle C requirements. This commenter also suggested that EPA should promulgate a rule establishing management conditions at all metal recyclers and smelters. However, such a rule would far exceed the scope of our variance proposal.

F. Additional factors

In addition to the five evaluation factors discussed above, EPA may consider other relevant factors in determining whether or not to grant a variance from the definition of solid waste for materials that have been reclaimed but must be reclaimed further before recovery is complete (40 CFR 260.31(c)(6)). These other factors may be raised by the petitioner, the Agency, or other interested parties. Such factors may be directly applicable to EPA's decision to grant a variance, or may be indirectly applicable, but relevant in assigning priorities for evaluating a particular petition.

1. Minimum Metals Content for Incoming Sludges

In the proposal, EPA considered the possibility that WRC could engage in ''sham recycling'' by blending electroplating sludges with low metal concentrations into sludges with higher concentrations, and marketing the blended ''product'' to smelters. EPA was concerned that WRC's processing would be a form of treatment for sludges which would ultimately be disposed of in smelter wastes, without contributing any significant metal content to smelter products. To ensure that WRC would be engaged in legitimate recycling, the Agency proposed to require each incoming sludge to have a minimum content of either two percent of copper, nickel or tin (on a dry weight basis), or a precious metal content with monetary value equivalent to the copper, nickel or tin value.

One commenter stated that no non-conforming shipments should be allowed, since this would be contrary to EPA's policy at other hazardous waste treatment, storage, and disposal facilities (TSDFs). In response, the Agency notes that our proposal to allow a certain number of non-conforming shipments does not affect the status of the incoming material as a hazardous waste. Such shipments would still be subject to all applicable Subtitle C requirements, as is the case with all other TSDFs. We are allowing WRC to accept a minimum number of shipments below the normal minimum metal content which will still be eligible for the variance because, as a practical matter, some shipments from generators will (albeit very infrequently) contain less than the desired metal content, and there is a possibility that this may not be discovered until processing of the shipment has begun.

Some commenters questioned the use of a two percent dry weight limit for copper, nickel, or tin. One commenter stated that EPA should provide a broader discussion of the data which it used to require that the minimum copper, nickel, or tin content of a sludge arriving at WRC must be two percent dry weight in order for the dewatered sludge to be equivalent in quality to virgin ore feedstocks. This commenter appeared to believe that the levels of both base and precious metals in the incoming sludges should be the same as the levels found in virgin ore feedstocks sent to smelters.

For example, this commenter questioned why economic value was used to determine equivalency of precious metals with base metals in incoming sludges, rather than expected virgin ore quality with respect to precious metals. The commenter stated that the value of gold per unit weight is approximately 5,000 times that of copper (based on current market prices). Therefore, the current economic equivalent of two percent copper (about 20,000 ppm) would be about 4 ppm gold, or about 0.09 troy ounce per ton. The commenter expressed doubt that ores containing such a low concentration of gold would be mined and smelted commercially. The commenter appeared to be suggesting that the required threshold level of precious metals in the incoming sludges be the same as the levels of such metals that smelters will accept in virgin ores. Two commenters stated that concentrate shipped by WRC to smelters can contain a significant moisture content (up to 50%). Therefore, according to these commenters, if the metal concentration in the incoming sludges were two percent on a dry weight basis, the actual concentration as shipped to the smelter would be below two percent. If feedstock equivalency required a copper concentration of at least 2.5 percent, the dry weight concentration in the sludge that WRC received would need to be at least four percent copper.

In response to this comment, EPA notes that we did not intend to require incoming sludges at the WRC facility to be equivalent to virgin ore feedstocks with respect to metal content. The purpose of this proposed requirement was to establish a minimum metal threshold below which little recovery of metals would occur. After reviewing available literature and discussing this issue with smelter representatives, the Agency concluded that the two percent limit appears to be a ''smelter cutoff,'' meaning the lowest concentration of metal that a given smelter will allow through the gate on a dry weight basis (*see* memorandum from Paul Borst titled ''Analysis of Minimum Metal Content of Secondary Feedstocks Destined for Primary Smelting Operations in North America,'' May 7, 1999).

The minimum metal content ensures that at least one smelter in North America would be able to receive and process all incoming sludges to the WRC facility.This condition on the variance ensures that secondary materials which have little or no recoverable metal may not be blended in with metal-bearing secondary materials with higher metal content. The condition therefore prevents surrogate treatment and disposal of the secondary materials with little or no recoverable metal content. It is not necessary to require WRC's concentrates to contain as much metal as virgin ore concentrates. Similarly, with respect to the reduction of moisture content, even if significant moisture reduction of the incoming sludges occurs, WRC is still responsible for meeting the minimum metal content on a dry weight basis required under contract specifications for particular smelters. In addition, we note that moisture reduction tends to concentrate metals levels, rather than dilute them, as the commenter implied. It is therefore unnecessary to require higher metals levels in the incoming sludges to account for moisture reduction.

Similarly, EPA is not aware of any smelters that refuse to give credit for precious metals in secondary materials

when their concentrations are lower than those considered acceptable for virgin ores, so long as the monetary values are equivalent. The Agency believes that it is reasonable to base minimum metal levels in the incoming sludges on smelter acceptance and pricing policies.

Another commenter said that EPA's choice of a two percent minimum metal content level for incoming sludges or an equivalent value in precious metals to assure the ''legitimacy'' of WRC's operation is based on faulty and incomplete analysis. This commenter suggested that the required minimum metal content should account for transportation and storage costs incurred by smelters receiving WRC concentrate, as well as WRC's processing costs. The commenter also stated that the highest rather than the lowest smelter cutoff should be used in determining legitimate recovery of metals from incoming material to WRC.

EPA does not agree that the highest smelter cutoff (*i.e.,* the most stringent metal limit required by any smelter) is an appropriate number for the incoming limit on metals in the sludges. If other smelters are purchasing materials with lower metal concentrations and reclaiming metals from these materials, there appears no reason to conclude that this is not legitimate reclamation. Nor does the Agency agree that transportation and storage costs should affect which level of metals allows legitimate recycling to occur.

Two commenters questioned how WRC would segregate its incoming loads into: (1) Sludges containing the required minimum levels of recoverable metals, and (2) sludges with lower levels of metals. EPA notes that the conditions of the variance do not absolutely prohibit WRC from receiving sludges with lower metal concentrations than those specified in the variance. However, listed sludges used in producing the concentrate that is eligible for the variance must conform to the minimum metals limit (except for two non-conforming loads). Sludges not used for this purpose need not contain minimum levels of metals. The Agency does not believe it is necessary to specify in the variance a particular method for segregating the two types of sludges. EPA notes that many facilities manage different wastestreams, some of which are regulated under RCRA and some of which are excluded. For purposes of retaining the regulatory exclusion, it often may be important to segregate wastestreams. However, EPA does not specify in its regulations a particular procedure for conducting such segregation.

Another commenter feared that waste streams containing recyclable levels of one metal could be diluted down to non-recyclable levels when mixed with waste streams containing other metals. This commenter proposed an additional condition for the WRC variance that would be implemented according to the following example. The company receives a sludge that has three percent copper and five percent nickel, so that the sludge is above the two percent minimum metal threshold for both metals. Hypothetically, the company makes a business decision to blend this sludge with other nickel-bearing sludges and ship the blended mixture to a nickel smelter for reclamation. The commenter is concerned that the copper in the original incoming shipment has been diluted below two percent and is non-recoverable at the nickel smelter. The commenter believes that this procedure would constitute sham recycling. The condition that the commenter proposed would require that a nickel/copper bearing sludge be only blended with other nickel/copper-bearing sludges and that the blend only be destined to a smelter or other recycling facility where both metals are recovered.

EPA does not agree that recovering nickel values would constitute sham recycling merely because the copper in the sludge could be diluted and possibly not recovered. WRC's processing would make the concentrate marketable by increasing the nickel value. Without WRC's drying, blending, and consolidating operations, the electroplating sludge most likely would not go to a smelter for recovery for either copper or nickel. So long as WRC increased the concentration for one metal, EPA does not think the fact that it diluted a second metal shows that recycling is not legitimate. Moreover, EPA believes that many virgin ores contain multiple metals that smelters do not extract.

2. Exports and Imports

One commenter noted that changing the regulatory status of the partially reclaimed material removes RCRA import and export requirements, thus taking away a safeguard designed to put foreign governments on notice that these materials are hazardous. This commenter suggested that if EPA grants the variance, it should continue to require compliance with these requirements. The same commenter was concerned that because WRC's facility is one of the top ten receivers of hazardous waste from Mexico, the granting of the variance may increase the flow of waste across the border, increasing the transportation risks inherent in long distance transport. The commenter believed that the variance could inadvertently discourage the development of much-needed hazardous waste disposal and recycling facilities in Mexico by creating an incentive for shipping exempted waste from Mexico into the U.S. Finally, the commenter stated that EPA should evaluate whether waste shipments from Mexico are compatible with Mexican and other applicable international or bilateral agreements concerning these wastes.

The Agency believes that the conditions of this variance are adequate to provide notice to foreign governments. The variance contains a requirement that WRC must send a one-time notification of the variance and its conditions to any country where metal smelters accepting WRC concentrates are located. WRC is also required to submit a Material Safety Data Sheet shipped with the concentrate and a notification that the concentrate may contain up to 590 ppm cyanide and that low pH environments can result in the production of hydrogen cyanide gas. EPA believes that this is sufficient notice to inform foreign governments of the nature of WRC's concentrate, and of the Agency's decision to exclude WRC's concentrate from the definition of solid waste. In addition, the Agency believes that the RCRA notification and consent requirements for imports and exports of hazardous waste are not necessary for materials that have been determined to resemble commodities more than wastes. We note that these requirements do not apply to any materials that are excluded from the definition of solid waste.

With respect to imports from Mexico, EPA believes that the commenter's concerns are speculative. The commenter gives no data or detailed theory to back up its concern that shipments from Mexico will increase or that Mexico will fail to develop needed waste management capacity. The status under RCRA of shipments of F006 imported from Mexico will not be affected by this variance. In addition, even though the Agency believes that RCRA export requirements should not apply to commodity-like materials, we note that this variance does not automatically affect the status of WRC's concentrate under foreign jurisdictions. If the concentrate is classified as a hazardous waste in a foreign jurisdiction, it would retain that status unless the appropriate regulatory authority in that jurisdiction decided to change the classification.

IV. Final Variance

The Agency is today conditionally granting the petitioner's (WRC's) request for a variance from classification as solid waste for the metal concentrate partially reclaimed from materials listed as hazardous waste F006 and F019 received at its Arizona facility, which are sold to metal smelters after being partially reclaimed by WRC. The variance is granted subject to the following conditions:

(1) Metal-bearing sludges F006 and F019 accepted by the facility from off-site and used in the production of the partially reclaimed concentrate materials must have a metals concentration level of no less than two percent on a dry weight basis, or an equivalent economic value in precious metals (*e.g.*, gold, silver, platinum, or palladium). In addition, the facility may only process two shipments of listed sludge materials that do not meet the two percent metals concentration level from a single generator within a 14-day time period before taking action to ensure that subsequent shipments will meet the minimum metal content. Specifically, WRC may not accept more than one non-conforming shipment from a generator, unless the second non-conforming shipment is received within 14 days following the first event. Thereafter, WRC may not accept additional materials from that generator until WRC determines that the generator's subsequent sludge shipments will meet the minimum metal content requirements of this condition.

(2) WRC shall provide to ADEQ an annual audit, performed by an independent third party mutually acceptable to WRC and ADEQ, to be completed within the six months following the end of each calendar year. The scope of the annual audit will cover WRC's concentrate shipments during the year to certify that all shipments were: (1) Made to metal smelting facilities; (2) documented and shipped in accordance with all applicable U.S. Department of Transportation regulations; and (3) documented to have reached the designated destination.

(3) The partially reclaimed concentrate materials must have a cyanide concentration of no greater than 590 ppm and may not be placed on the land at metal smelting facilities. Cyanide must be analyzed using method 9010 or 9012 found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'', EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and five minutes.

(4) WRC must send a one-time notification of the variance and its conditions to any foreign country where metal smelters accepting WRC concentrate are located. In addition, WRC must include on its Material Safety Data Sheet shipped with the concentrate a notification that the concentrate may contain up to 590 ppm cyanide and that low pH environments can result in the production of hydrogen cyanide gas.

(5) To ensure that its customers handle the processed concentrates as valuable commodities in a manner that minimizes loss, WRC must place a provision stipulating no land placement of the materials in its contractual agreements with smelting facilities.

(6) This conditional variance from classification as solid waste for the metal concentrate reclaimed from listed hazardous wastes F006 and F019 at WRC's Phoenix, Arizona facility takes effect at the point at which the concentrate is loaded for shipment. This conditional variance does not affect the regulatory status of any other hazardous wastes handled by WRC at the Phoenix facility. In addition, the variance does not apply to or affect the regulatory status of any wastes managed at any other WRC facility.

V. Effect of Variance in Arizona

EPA notes that Arizona is authorized to administer and enforce the RCRA hazardous waste program pursuant to section 3006 of RCRA. Generally, when EPA grants a variance under 40 CFR 260.30, the variance would be automatically effective only in unauthorized States. However, there are two circumstances that make this variance effective in the State of Arizona. First, WRC, EPA Region IX and the Arizona Department of Environmental Quality (ADEQ) executed a Consent Agreement and Consent Order (CA/CO) that finalized regulatory requirements for the WRC recycling facility at Phoenix. Under the CA/CO, if EPA makes a favorable decision regarding WRC's petition for a variance, Arizona is obligated to ''honor and give legal effect to the variance determination within the State of Arizona.'' Second, Arizona's regulations at A.A.C. R18–8–260(J)(Supp. 98–2) (which incorporates and modifies 40 CFR 260.30 entitled ''Variances from classification as a solid waste'') provides that ''any person wishing to submit a variance petition shall submit the petition, under this subsection, to EPA. Where the Administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, and 260.33, the Director shall accept the determination, provided the Director determines that the action is consistent with the policies and purposes of the HWMA'' (the Hazardous Waste Management Act underlying Arizona's authorized status). Since the Director has made such a determination, no further action will be necessary before the variance takes effect under state law upon promulgation by EPA.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13175 (63 FR 27655, May 10, 1998). For the same reason, this 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 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Dated: August 6, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–20352 Filed 8–12–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 156
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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 JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 212, and 240

[EOIR No. 130I; AG Order No. 2607–2002]

RIN 1125–AA33

Executive Office for Immigration Review; Section 212(c) Relief for Aliens With Certain Criminal Convictions Before April 1, 1997

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations of the Executive Office for Immigration Review (EOIR) and the Immigration and Naturalization Service (INS) by establishing procedures for lawful permanent residents (LPRs) with certain criminal convictions arising from plea agreements reached prior to a verdict at trial to apply for relief from deportation or removal pursuant to former section 212(c) of the Immigration and Nationality Act. It also sets forth procedures and deadlines for filing special motions to seek such relief before an Immigration Judge or the Board of Immigration Appeals for LPRs currently in proceedings or under final orders of deportation or removal.

DATES: Written comments must be submitted on or before October 15, 2002.

ADDRESSES: Please submit written comments to Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041. E-mail comments may be submitted to the following e-mail address: <*212crule@usdoj.gov*>.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Executive Office for Immigration Review:* Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470 (not a toll-free call). *For matters relating to the Immigration and Naturalization Service:* Daniel S. Brown, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC. 20536, telephone (202) 514–2895 (not a toll-free call).

SUPPLEMENTARY INFORMATION: This proposed rule would permit certain lawful permanent residents (LPRs) who have pleaded guilty or nolo contendere to crimes before April 1, 1997, to seek relief, pursuant to former section 212(c) of the Immigration and Nationality Act (INA or Act), from being deported or removed from the United States on account of those pleas. Under the proposed rule, eligible LPRs currently in immigration proceedings or former LPRs under a final order of deportation or removal could file a request to apply for relief under former section 212(c) of the Act, as in effect on the date of their plea, regardless of the date the plea was entered by the court.

Until the recent Supreme Court decision in *INS* v. *St. Cyr,* 533 U.S. 289 (2001), the Department had relied upon the date on which the alien was placed into deportation or removal proceedings to determine whether or not an LPR was eligible to apply for section 212(c) relief, not the date of the alien's conviction. This proposed rule would allow aliens with prior criminal pleas to apply for waivers under former section 212(c), under the law as it existed at the time of their pleas, in light of the Court's interpretation of the law in *St. Cyr.* The Department would continue to treat convictions entered as the result of a trial as it had prior to *St. Cyr.* Former LPRs who are under a final order of deportation or removal would also be eligible to apply for relief under former section 212(c) of the INA as it existed at the time of their pleas. This proposed rule is applicable only to certain eligible aliens who were convicted by pleas made prior to April 1, 1997.

What Is the Historical Background of This Rule?

Former section 212(c) of the INA. Since 1996, section 212(c) of the INA has undergone two major changes, the first one made by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104–132, 110 Stat. 1214, and the second by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C, 110 Stat. 3009–546. The first amendment narrowed the availability of the waiver by making LPRs with certain kinds of criminal convictions ineligible. The second amendment eliminated the section 212(c) waiver entirely for LPRs placed into removal proceedings on or after April 1, 1997, and substituted a somewhat similar form of relief known as cancellation of removal. See INA § 240A(a), 8 U.S.C. 1229b.

These amendments of section 212(c) generated extensive litigation, as discussed below, culminating in the Supreme Court's recent decision in *St. Cyr.* This rule consolidates the Department's interpretation of the availability of the section 212(c) waiver for LPRs in light of this litigation.

Before the comprehensive revision of the INA by IIRIRA and AEDPA, section 212(c) provided that LPRs who temporarily proceeded abroad voluntarily and not under an order of deportation, and who were returning to a lawful unrelinquished domicile in the United States of seven consecutive years, could be admitted to the United States in the discretion of the Attorney General. 8 U.S.C. 1182(c) (1994). This form of relief was discretionary, but, if granted, allowed the LPR to remain in the United States notwithstanding the prior conviction. Judicial interpretation of former section 212(c) permitted the waiver of certain grounds of deportability as well as certain grounds of excludability (now known as inadmissibility).

Litigation on eligibility for section 212(c) relief. In AEDPA, Congress significantly restricted the availability of discretionary relief from deportation under section 212(c). Section 440(d) of AEDPA made aliens ineligible for relief under section 212(c) if they were deportable because of convictions for certain criminal offenses, including aggravated felonies, controlled substance offenses, certain firearms offenses, espionage, or more than one crime of moral turpitude.

On February 21, 1997, former Attorney General Janet Reno concluded that section 440(d) applied to (and thereby rendered ineligible for section 212(c) relief) all aliens who had committed one of the specified offenses and who had not finally been granted section 212(c) relief before the date

AEDPA was enacted, including those who were already in deportation proceedings or who had already applied for section 212(c) relief at the time of the AEDPA's enactment. *See Matter of Soriano,* 21 I. & N. Dec. 516 (BIA 1996, A.G. 1997).

The *Soriano* issue gave rise to widespread litigation in almost every circuit on several time and reliance-related eligibility issues. These issues included the possible relevance of various other dates in determining whether or not a particular alien was eligible to apply for section 212(c) relief: the date the alien was placed into proceedings; the date the alien applied for section 212(c) relief; the date any relevant crimes were committed; and the date any relevant pleas or convictions were entered. *See* 66 FR 6436, 6437–38 (Jan. 22, 2001) for a more detailed summary of this litigation.

Most of the courts of appeals held that, despite the changes made by AEDPA, aliens who had filed applications for section 212(c) relief before the enactment of AEDPA were still eligible for that relief. One court further held that AEDPA did not apply to aliens who had been placed into deportation proceedings before the enactment of AEDPA, even if they did not actually request section 212(c) relief until after AEDPA was enacted.

With respect to aliens who were first put into proceedings after the enactment of AEDPA, several courts held that AEDPA section 440(d) foreclosed section 212(c) relief for those aliens, even if their criminal convictions occurred before the enactment of AEDPA. Some other courts, however, had concluded that AEDPA should not be interpreted to foreclose section 212(c) relief, at least with respect to aliens who had pleaded guilty and were convicted of crimes prior to AEDPA in reliance on the existing immigration laws—at a time when those convictions did not disqualify the alien from eligibility to apply for section 212(c) relief.

The Department's Soriano regulation. In response to this extensive litigation, the Department issued a rule creating a uniform procedure for applying the law, as amended by AEDPA, with respect to aliens who had been placed into proceedings before that law was enacted (April 24, 1996). *See* 66 FR 6436 (Jan. 22, 2001) (codified at 8 CFR 3.44) (the Soriano rule). That rule allowed all eligible LPRs who had been placed into proceedings prior to April 24, 1996, to apply for relief under section 212(c), under the pre-AEDPA standards, and also provided a 180-day period for aliens with final orders of deportation who were adversely affected by the Attorney General's ruling in Soriano to move to reopen their proceedings. That 180-day period for motions to reopen ended on July 23, 2001.

The Supreme Court's Decision. On June 25, 2001, the Supreme Court issued its decision in *INS* v. *St. Cyr,* 533 U.S. 289 (2001), which held that ''§ 212(c) relief remains available for aliens * * * whose convictions were obtained through plea agreements and who, notwithstanding those convictions, would have been eligible for § 212(c) relief at the time of their plea under the law then in effect.'' 533 U.S. at 326. As a matter of statutory construction, based on concerns about the retroactive application of IIRIRA to aliens who may have negotiated plea agreements in reliance on the continued availability of section 212(c) relief, the Court concluded that Congress had not made clear in IIRIRA an intent to deny such aliens the opportunity to seek such relief once they were placed into proceedings. Thus, the Court looked to the law as of the date of the alien's plea agreement to determine whether the alien was eligible to apply for section 212(c) relief, rather than the date the deportation or removal proceedings commenced. Although the Supreme Court addressed only the IIRIRA amendment and not the AEDPA limitation on section 212(c) relief, the reasoning of *St. Cyr* applies equally to section 440(d) of AEDPA. Indeed, the Supreme Court's above-quoted statement of the holding is best read to encompass section 440(d) of AEDPA. *See, e.g., Attwood* v. *Ashcroft,* 260 F.3d 1, 3 (1st Cir. 2001) (holding that, in light of the Supreme Court's decision in *St. Cyr,* an alien who pleaded guilty prior to the date of AEDPA's enactment and was placed into proceedings before IIRIRA is eligible to apply for section 212(c) relief).

Why Is the Department Issuing This Proposed Rule?

In light of the recent Supreme Court decision in *St. Cyr,* this proposed rule would provide procedures for eligible aliens to apply for section 212(c) relief before an Immigration Judge or the Board of Immigration Appeals. Because this proposed rule would revise the Department's interpretation of the availability of section 212(c) relief in light of *St. Cyr,* the Department also will modify the provisions of § 3.44 as adopted in January 2001 (the Soriano rule) to provide that this rule will govern the adjudication of relief applications filed by aliens who fall within the ambit of the *St. Cyr* decision. This proposed rule provides an important opportunity for LPRs covered by the Court's decision to apply for relief from deportation or removal or otherwise achieve finality in their immigration matters.

Scope of section 212(c) relief. This proposed rule is intended to further eliminate the disparity among the courts of appeals on the variety of issues relating to section 212(c) relief. Accordingly, this proposed rule would codify the Supreme Court's holding.

Conforming changes to the existing regulations. Because IIRIRA had repealed section 212(c) (which applied to exclusion and deportation proceedings) and substituted different forms of relief for purposes of removal proceedings commenced on or after April 1, 1997, this proposed rule would also make several necessary technical conforming changes in §§ 212.3 and 240.1 of the existing regulations to take account of the circumstances in which aliens would be able to apply for section 212(c) relief with respect to pleas made prior to April 1, 1997, even if they were placed into removal proceedings on or after that date.

The Department notes that former section 242B(e) of the Act, 8 U.S.C. 1252b (1994), barred certain aliens who were ordered deported in absentia from receiving specific forms of discretionary relief for a period of 5 years after the barring act. This statutory provision was repealed by section 308(b)(6) of IIRIRA. The regulatory provision implementing former section 242B(e) is found at 8 CFR 212.3(f)(5). Because section 242B(e) of the Act was repealed by the IIRIRA, § 212.3(f)(5) will be striken from the regulation.

Who Is Eligible To Apply for Section 212(c) Relief Pursuant to This Proposed Rule?

An applicant must, at a minimum, meet the following criteria to be considered for a waiver under section 212(c):

- The alien is now an LPR (or was an LPR prior to receiving a final order of deportation or removal);
- The alien is returning to a lawful, unrelinquished domicile of seven consecutive years (or is a former LPR who had established a lawful, unrelinquished domicile of seven consecutive years prior to a final order of deportation or removal);
- The alien is admissible in the discretion of the Attorney General without regard to section 212(a) (other than paragraph (3) (terrorism and security grounds) or paragraph (9)(C) (unlawfully present after previous immigration violations);
- The alien is deportable or removable on a ground that has a

corresponding ground of exclusion or inadmissibility; and

• The alien would have not have been barred from applying for section 212(c) relief with respect to his or her pleas based on the law as it existed at time of the pleas, unless the alien has been charged and found to be removable based on a crime that is an aggravated felony as defined in section 321(a) of IIRIRA, regardless of the date the alien's plea was made.

This proposed rule would not apply to aliens who have departed, and are currently outside the United States; aliens who were subject to a final order of deportation or removal and who have illegally returned to this country; and aliens who are present in the United States without having been admitted or paroled.

Aliens who have been deported or have departed under an order of deportation or removal will not be eligible for relief under the regulation. This policy is consistent with the Soriano rule. *See* 66 FR 6436 (Jan. 22, 2001) (codified at 8 CFR 3.44). As a general rule, aliens who have been deported or departed, and for whom the period of time for filing a petition for review of their removal orders in the court of appeals has closed (or if a petition has been filed, it has been denied), may not challenge their prior immigration proceedings. *See* 8 U.S.C. 1231(a)(5); 8 CFR 3.2(d).

The Department's decision to draw a line between those aliens who are in the United States and those aliens who have been deported is reasonable and consistent with the plenary authority of the political branches of the government in the immigration area. *See Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977); *Mathews* v. *Diaz*, 426 U.S. 67, 80–82 (1976). Aliens whose final orders of removal or deportation have been executed, and for whom the period of time for filing a petition for review of their removal orders in the court of appeals has closed (or if a petition has been filed, it has been denied), are not situated similarly to those aliens who are present in the United States with removal orders because the deportation process for the former class of aliens has been completed. They are barred from reentering the United States for a period of at least five years (except with the permission of the Attorney General), and if they do reenter illegally, the Service may re-execute their prior order. *See* 8 U.S.C. 1231(a)(5). Thus, these aliens stand in a different position from an alien who is present in the United States. *Cf. Zadvydas* v. *Davis*, 533 U.S. 678, 693 (2001) (''It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders''). Moreover, refusing to allow aliens who have been deported from the United States to obtain relief under the regulation is consistent with Congress's intent as demonstrated by the language in former section 212(c), which makes relief available to aliens ''lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and *not under an order of deportation*. * * *'' 8 U.S.C. 1182(c) (1994) (emphasis added).

Furthermore, the distinction is reasonable because it is logically related to the orderly administration of this country's immigration laws. Allowing aliens who have been deported to seek relief under the regulation would create certain verification problems relating to the applicant's identity and criminal history. Aliens who were denied 212(c) relief pursuant to AEPDA, and who were deported years ago, may have been convicted of crimes abroad that would disqualify them from relief under the regulation, but which would be difficult, if not impossible, for the INS to discover and verify. Restricting relief to aliens in the United States eliminates this burden. Finally, the Department's distinction is reasonable and fair because aliens who have been deported had a sufficient opportunity to challenge the denial of their applications for 212(c) relief in administrative and judicial proceedings.

Can All Convictions Entered Prior to April 1, 1997 Be Waived Under This Proposed Rule?

Under this rule, aliens whose pleas were made before April 24, 1996, regardless of when they were entered by the court, will be eligible to apply for section 212(c) relief without regard to the amendments made by AEDPA. Thus, an LPR who has not served an aggregate term of at least five years for aggravated felonies may apply for section 212(c) relief, if otherwise eligible, with respect to any criminal convictions arising from a plea made before April 24, 1996. *See* former INA § 212(c), 8 U.S.C. 1182(c) (1994). Nothing in this proposed rule would affect the applicability of the bar to 212(c) relief for aliens who have served sentences of five years or more for aggravated felonies, regardless of whether the conviction occurred before that bar's enactment in 1990. The Supreme Court in *St. Cyr* addressed only the bars enacted by AEDPA and IIRIRA, not the 1990 amendments. As to the latter, the courts have uniformly held that the bar for aggravated felons imprisoned for five years or more applies without regard to the date of the conviction. *See, e.g., Scheidemann* v. *INS*, 83 F.3d 1517, 1523 (3rd Cir. 1996); *Samaniego-Meraz* v. *INS*, 53 F.3d 254, 256 (9th Cir. 1995); *Asencio* v. *INS*, 37 F.3d 614, 617 (11th Cir. 1994); *Campos* v. *INS*, 16 F.3d 118, 122 (6th Cir. 1994); *De Osorio* v. *INS*, 10 F.3d 1034, 1041 (4th Cir. 1993); *Buitrago-Cuesta* v. *INS*, 7 F.3d 291, 294 (2nd Cir. 1993); *Barreiro* v. *INS*, 989 F.2d 62, 64 (1st Cir. 1993); Ignacio v. INS, 955 F.2d 295, 299 (5th Cir. 1992).

Section 440(d) of AEDPA amended section 212(c) of the INA to provide that section 212(c) ''shall not apply to an alien who is deportable by reason of having committed any criminal offense covered by [former] section 241(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by [former] section 241(a)(2)(A)(ii) for which both predicate offenses are, without regard to the date of their commission, otherwise covered by [former] section 241(a)(2)(A)(i).'' AEDPA § 440(d), as amended by IIRIRA § 306(d).

The effect of section 440(d) of AEDPA was to render an alien ineligible for relief under section 212(c) if he or she was deportable because of convictions for certain criminal offenses, including aggravated felonies, controlled substance offenses, certain firearms offenses, espionage, and multiple crimes of moral turpitude. This narrower version of section 212(c) relief is available to aliens who made pleas on or after April 24, 1996, and before April 1, 1997, regardless of when the plea was entered by the court. Section 212(c) relief is unavailable to aliens who made pleas on or after April 1, 1997, the effective date of IIRIRA, which eliminated this form of relief.

Which Definition of an ''Aggravated Felony'' Should Be Used To Determine Eligibility for Section 212(c) Relief?

The definition of an aggravated felony is contained in section 101(a)(43) of the Act. 8 U.S.C. 1101(a)(43). Congress has amended this definition over time, to add additional crimes to the list of aggravated felonies. Thus, some aliens have been convicted of crimes in the past that were not defined as aggravated felonies at the time of conviction, but are now among the listed crimes that are aggravated felonies under current law.

The definition of aggravated felony, as amended by IIRIRA, applies to convictions entered before, on, or after the date of enactment of IIRIRA. *See* INA § 101(a)(43), 8 U.S.C. 1101(a)(43); IIRIRA § 321(b). This definition applies to determine whether an alien is deportable on account of having

committed an aggravated felony. This definition also applies to determine the eligibility for section 212(c) relief in those cases where an alien is deportable as an aggravated felon. *See Matter of Fortiz*, 21 I. & N. Dec. 1199 (BIA 1998). Thus, if an alien pleaded guilty to a crime before the enactment of IIRIRA, and his or her crime became an aggravated felony after the enactment date of IIRIRA, the alien could be charged as an aggravated felon and be ineligible for section 212(c) relief. However, aliens who have not been charged and found deportable as aggravated felons would not be affected by section 321 of IIRIRA.

How Is 7 Years Lawful, Unrelinquished Domicile in the United States Defined in This Proposed Rule?

An eligible alien must have lived in the United States as either an LPR, or a lawful temporary resident pursuant to INA section 245A, 8 U.S.C. 1255a, or INA section 210, 8 U.S.C. 1160, for at least seven years, as defined in 8 CFR 212.3(f)(2). For purposes of this rule, an alien begins accruing time as of the date of entry or admission as either a lawful permanent resident or lawful temporary resident and the accrual of time ceases when there is a final administrative order in the alien's case, as defined in 8 CFR 240.52 and 3.39. Accordingly, if an alien is the subject of a final order of removal, the alien who files a motion for section 212(c) relief pursuant to this proposed rule must have accrued seven years of lawful, unrelinquished domicile as of the date of his or her final administrative order. The Board of Immigration Appeals has long held that lawful domicile ends at the issuance of a final administrative order of deportation or removal. *See Matter of Cerna*, 20 I. & N. Dec. 399 (BIA 1991).

What Are the Procedures for Filing for Section 212(c) Relief?

The procedure to follow depends on whether the alien is currently in proceedings. Aliens who are currently in proceedings before an Immigration Judge or the Board of Immigration Appeals must follow different procedures than those aliens who have administratively final orders.

1. *Aliens not currently in proceedings who are seeking a 212(c) waiver prior to temporarily leaving the United States*: This rule does not change the practice, pursuant to 8 CFR 212.3(a)(1), of allowing an alien to apply directly to a district director for section 212(c) relief if he or she qualifies for the waiver.

2. *Aliens in pending deportation or removal proceedings*: An eligible alien who is the subject of a pending deportation or removal proceeding before an Immigration Judge should file a section 212(c) application pursuant to this rule, or request a reasonable period of time to submit an application pursuant to this rule. If the alien has previously filed an application, he or she may file a supplement to the existing section 212(c) application.

3. *Aliens with an appeal pending before the Board*: An eligible alien who has an appeal pending before the Board should file with the Board a motion for remand to the Immigration Court in order to file a section 212(c) application, or a motion to supplement his or her existing section 212(c) application on the basis of eligibility for such relief pursuant to this rule. If the alien appears to be statutorily eligible for relief under this rule, the Board will remand the case to the Immigration Court for adjudication, unless the Board chooses to exercise its discretionary authority to adjudicate the matter on the merits without a remand.

4. *Aliens under a final order of deportation or removal*: An alien who is the subject of a final order of deportation or removal who is eligible to apply for section 212(c) relief pursuant to this rule must file a ''special motion to seek 212(c) relief'' with the Immigration Court or the Board, whichever last held jurisdiction, as provided in § 3.44 as added by this rule. The front page of the motion and any envelope containing the motion should include the notation ''special motion to seek 212(c) relief.'' Even if the alien has previously filed a motion to reopen or a motion to reconsider with the Immigration Court or the Board on other grounds, pursuant to 8 CFR 3.23 or 3.2, an eligible alien who is the subject of a final order must file a separate ''special motion to seek 212(c) relief'' under § 3.44 in order to receive the benefits of this rule.

Any proceeding arising from grant of the special motion under § 3.44 will be limited to issues concerning the alien's eligibility for relief under section 212(c), and may not address the alien's deportability, excludability, removability, or any other basis for relief from deportation or removal unless the Immigration Judge or the Board has reopened the case for other reasons under other applicable provisions of law, in which case the issues may be consolidated for hearing as appropriate and all appropriate motions fees will apply.

If the alien previously filed an application for section 212(c) relief, he or she must file a copy of that application or a copy of a new application and supporting documents with the motion. If the motion is granted, an alien who previously paid a filing fee and filed a Form I–191 application for section 212(c) relief will not be required to pay a new filing fee.

If the alien has not previously filed an application for section 212(c) relief, the alien must submit a copy of his or her completed application and supporting documents with the motion. If the motion is granted, the alien must then file the application with the appropriate fee pursuant to 8 CFR 103.7.

An alien may file only one ''special motion to seek 212(c) relief'' for purposes of establishing eligibility under this proposed rule. A motion filed pursuant to this proposed rule either before the Immigration Court or the Board, whichever last had jurisdiction, must specify whether the alien has any pending motions before the Immigration Court or the Board. All ''special motions to seek 212(c) relief'' filed pursuant to this rule are subject to the restrictions specified in this proposed rule. The usual time and number restrictions on motions, as articulated in 8 CFR 3.2 and 3.23, shall apply to all other motions, but are not applicable to a ''special motion to seek 212(c) relief'' under this proposed rule.

Are Aliens Who Were Eligible To Seek Section 212(c) Relief Under the Department's Soriano Rule Eligible To Seek Section 212(c) Relief Under This Rule?

Eligible aliens who have already filed a motion under the Soriano rule (the current version of § 3.44) would not need to file a motion under this proposed rule because they would have already been provided the opportunity to seek relief. Aliens who did not file a motion under the Soriano rule, if they are otherwise eligible under this proposed rule, would be able to file under this rule.

However, this rule does not allow an alien to relitigate the merits of a prior motion for section 212(c) relief. An alien who has previously been denied section 212(c) relief as a matter of discretion will not be able to get a second opportunity to apply for relief under this rule.

Is There a Time Limit for Filing a ''Special Motion To Seek 212(c) Relief''?

Yes. An alien must file a ''special motion to seek 212(c) relief'' 180 days from the effective date of the final rule.

Is There a Fee for Filing a ''Special Motion To Seek 212(c) Relief''?

There is no fee to file this motion. However, the usual fees apply to any other motions filed by the alien.

Is There a Fee To File a Section 212(c) Application?

Unless the alien has already filed a section 212(c) application and only needs to update the application, the alien must pay the fee required by 8 CFR 103.7(b)(1) for Form I–191 (currently $170). *See* 8 CFR 103.7. An alien currently in deportation or removal proceedings who did not previously file a section 212(c) application shall submit the Form I–191 to the Immigration Court with the appropriate fee receipt attached.

If the case is pending on appeal before the Board, the alien must submit a copy of the section 212(c) application with the motion to remand. If the motion to remand to the Immigration Court is granted, the alien must then file the application and the appropriate fee receipt with the Immigration Court at that time.

An eligible alien who is the subject of a final administrative order of deportation or removal is not required to pay a fee at the time of filing the ''special motion to seek 212(c) relief.'' However, if the motion is granted, he or she must file the section 212(c) application with the appropriate fee receipt.

Nothing in this proposed rule would change the requirements and procedures in 8 CFR 3.31(b), 103.7(b)(1), and 240.11(f) for paying the application fee for a section 212(c) application after a motion is granted if such an application was not previously filed. Fees must be submitted to the local office of the Service in accordance with 8 CFR 3.31. An applicant who is eligible for section 212(c) relief and is unable to pay the filing fee may request a fee waiver in accordance with 8 CFR 103.7(c).

Does the Filing of a ''Special Motion To Seek 212(c) Relief'' Stay the Execution of a Final Order?

The mere filing of a motion with the Immigration Court or the Board does not stay the execution of the final order of deportation or removal. To request a stay of the execution of the final order from the Service, the alien must file an Application for Stay of Removal (Form I–246), following the procedures set forth in 8 CFR 241.6. To request that execution of the final order be stayed by the Immigration Courts or the Board, the alien must file a request for a stay with either the Court or the Board. *See* 8 CFR 3.2(f) or 3.23(b)(1)(v).

What Happens If an Alien Fails To Appear for a Hearing Before an Immigration Judge on a Section 212(c) Application?

An alien must appear for all scheduled hearings before an Immigration Judge, unless his or her appearance is waived by the Immigration Judge. An alien who is in deportation or removal proceedings before an Immigration Judge, and who fails to appear for a hearing regarding a section 212(c) application, will be subject to the applicable statutory and regulatory in absentia procedures (*i.e.,* former section 242B of the Act as it existed prior to amendment by IIRIRA, 8 U.S.C. 1252b (1994), or section 240(a)(5) of the Act, 8 U.S.C. 1229a(a)(5), and applicable regulations).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would provide a more uniform review process governing the eligibility of certain aliens to apply for 212(c) relief. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone (703) 305–0470.

Paperwork Reduction Act

This rule will increase the use of Form I–191 but will not result in a material change in that form, and the INS is adjusting the total burden hours of the form accordingly. Prior to AEDPA and IIRIRA, approximately 4,900 applications for this waiver were considered annually. From the date of the amendments to section 212(c) by AEDPA and IIRIRA, approximately 30,000 LPRs were affected. Some unknown number of the affected LPR's will file either new or amended Form I–191.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Revise § 3.44 and revise to read as follows:

§ 3.44 Special motion to seek section 212(c) relief for aliens who pleaded guilty or nolo contendere to certain crimes before April 1, 1997.

(a) *Standard for adjudication.* This section applies to certain aliens who formerly were lawful permanent residents, who are subject to an administratively final order of exclusion, deportation or removal, and who are eligible to apply for relief under former section 212(c) of the Act and § 212.3 of this chapter with respect to convictions obtained by plea agreements reached prior to a verdict at trial prior to April 1, 1997. A special motion to seek relief under section 212(c) of the Act will be adjudicated under the standards of this section and § 212.3 of this chapter.

(b) *General eligibility.* Generally, a special motion to seek section 212(c) relief must establish that the alien:

(1) Was a lawful permanent resident and is now subject to a final order of deportation or removal;

(2) Made a plea of guilty or nolo contendere on or before April 1, 1997, to an offense rendering the alien deportable or removable;

(3) Had seven consecutive years of lawful unrelinquished domicile in the United States prior to the date of the final administrative order of deportation or removal; and

(4) Is otherwise eligible to apply for section 212(c) relief under the standards that were in effect at the time the alien's plea was made, regardless of when the plea was entered by the court.

(c) *Aggravated felony definition.* For purposes of eligibility to apply for section 212(c) relief under this section and § 212.3 of this chapter, the definition of aggravated felony in section 101(a)(43) of the Act is that in effect at the time the special motion or the application for section 212(c) relief is adjudicated under this section. An alien shall be deemed to be ineligible for section 212(c) relief if he or she has been charged and found removable on the basis of a crime that is an aggravated felony. However, an alien whose plea pre-dates April 24, 1996, is ineligible for section 212(c) relief only if he or she has served a term of imprisonment of five years or more for a crime that is an aggravated felony.

(d) *Effect of prior denial of section 212(c) relief.* A motion under this section will be granted with respect to any conviction where an alien has previously been denied section 212(c) relief by an Immigration Judge or by the Board on discretionary grounds.

(e) *Scope of proceedings.* Proceedings shall be reopened under this section solely for the purpose of adjudicating the application for section 212(c) relief, but if the Immigration Judge or the Board grants a motion by the alien to reopen the proceedings on other applicable grounds under §§ 3.2 or 3.23 of this chapter, all issues encompassed within the reopened proceedings may be considered together, as appropriate.

(f) *Procedure for filing a special motion to seek section 212(c) relief.* An eligible alien shall file a special motion to seek section 212(c) relief with the Immigration Court or the Board, whichever last held jurisdiction over the case. An eligible alien must submit a copy of the Form I–191 application, and supporting documents, with the special motion. The motion must contain the notation ''special motion to seek 212(c) relief.'' The Service shall have 45 days from the date of filing of the special motion to respond. In the event the Service does not respond to the motion, the Service retains the right in the proceedings to contest any and all issues raised.

(g) *Relationship to motions to reopen or reconsider on other grounds.* (1) *Other pending motions.* An alien who has previously filed a motion to reopen or reconsider that is still pending before the Immigration Court or the Board, other than a motion for section 212(c) relief, must file a separate special motion to seek section 212(c) relief pursuant to this section. The new motion shall specify any other motions currently pending before the Immigration Court or the Board. Any motion for section 212(c) relief described in this section pending before the Board or the Immigration Courts on the date of publication of the interim rule in the **Federal Register** that would be barred by the time or number limitations on motions shall be deemed to be a motion filed pursuant to this section, and shall not count against the number restrictions for other motions to reopen.

(2) *Limitations for motions.* The filing of a special motion under this section has no effect on the time and number limitations for motions to reopen or reconsider that may be filed on grounds unrelated to section 212(c).

(h) *Deadline to file a special motion to seek section 212(c) relief under this section.* An alien subject to a final administrative order of deportation or removal must file a special motion to seek section 212(c) relief on or before 180 days from date of publication of the final rule. An eligible alien may file one special motion to seek section 212(c) relief under this section.

(i) *Fees.* No filing fee is required at the time the alien files a special motion to seek section 212(c) relief under this section. However, if the special motion is granted, and the alien has not previously filed an application for section 212(c) relief, the alien will be required to submit the appropriate fee receipt at the time the alien files the Form I–191 with the Immigration Court.

(j) *Remands of appeals.* If the Board has jurisdiction and grants the motion to apply for section 212(c) relief pursuant to this section, it shall remand the case to the Immigration Court solely for adjudication of the section 212(c) application unless the Board chooses to exercise its discretionary authority to adjudicate the matter on the merits without a remand.

(k) *Limitations on eligibility under this section.* This section does not apply to:

(1) Aliens who have departed the United States;

(2) Aliens with a final order of deportation or removal who have illegally returned to the United States; or

(3) Aliens who have not been admitted or paroled.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

4. Amend § 212.3 by revising paragraph (a)(2), the second to last sentence of paragraph (b), paragraph (d), the first sentence of paragraph (e)(1), and paragraphs (e)(3), (f)(3), (f)(4), and (g), and by removing paragraph (f)(5) to read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

(a) * * *

(2) The Immigration Court if the application is made in the course of proceedings under section 240 of the Act, or under former sections 235, 236, or 242 of the Act (as it existed prior to April 1, 1997).

(b) * * * All material facts or circumstances that the applicant knows or believes apply to the grounds of excludability, deportability, or inadmissibility must be described in the application. * * *

* * * * *

(d) *Validity.* Once an application is approved, that approval is valid indefinitely. However, the approval covers only those specific grounds of excludability, deportability, or inadmissibility that were described in the application. An applicant who failed to describe any other grounds of excludability, deportability, or inadmissibility, or failed to disclose material facts existing at the time of the approval of the application, remains excludable, deportable, or inadmissible under the previously unidentified grounds. If the applicant is excludable, deportable, or inadmissible based upon any previously unidentified grounds a new application must be filed.

(e) * * *

(1) An eligible alien may renew or submit an application for the exercise of discretion under former section 212(c) of the Act in proceedings before an Immigration Judge under section 240 of the Act, or under former sections 235, 236, or 242 of the Act (as it existed prior to April 1, 1997), and under this chapter. * * *

* * * * *

(3) An alien otherwise entitled to appeal to the Board of Immigration Appeals may appeal the denial by the Immigration Judge of this application in accordance with the provisions of § 3.38 of this chapter.

(f) * * *

* * * * *

(3) The alien is subject to exclusion or inadmissibility from the United States under paragraphs (3)(A), (3)(B), (3)(C), or (3)(E) or (9)(C) of section 212(a) of the Act (8 U.S.C. 1182);

(4) The alien has been convicted of an aggravated felony or felonies, as defined by section 101(a)(43) of the Act. 8 U.S.C. 1101(a)(43). With respect to pleas made prior to April 24, 1996, the alien is ineligible only if he or she has served a term of imprisonment of at least five years for such aggravated felony or felonies.

(g) *Availability of section 212(c) relief for aliens who pleaded guilty or nolo contendere to certain crimes.* For purposes of this chapter, the date of the plea will be considered the date the plea was agreed to by the parties.

(1) *Pleas before April 24, 1996.* Regardless of whether an alien is in exclusion, deportation, or removal proceedings, section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996 shall not apply to any pleas made before April 24, 1996.

(2) *Pleas between April 24, 1996 and April 1, 1997.* Regardless of whether an alien is in exclusion, deportation, or removal proceedings, an eligible alien who pleaded guilty or nolo contendere and whose plea was made on or after April 24, 1996, and before April 1, 1997, may apply for relief under section 212(c) of the Act, as amended by section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996.

(3) *Pleas on or after April 1, 1997.* Section 212(c) relief is not available with respect to pleas made on or after April 1, 1997.

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

5. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

6. In § 240.1, amend paragraph (a)(1)(ii) by adding at the end ‘‘, and former section 212(c) (as it existed prior to April 1, 1997);’’.

Dated: August 6, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–20403 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–30–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE99

Small Business Size Standards; Size Standards by 2002 North American Industry Classification System

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its Small Business Size Regulations by incorporating the Office of Management and Budget’s (OMB) 2002 modifications of the North American Industry Classification System (NAICS) into its table of small business size standards. These modifications are limited to industries in six (6) NAICS Sectors. The modifications result in a small number of size standard changes to certain NAICS activities.

SBA believes that the subject of this proposed rule is noncontroversial and routine, and SBA anticipates no adverse comments to this proposal. Therefore, SBA is publishing concurrently in this issue of the **Federal Register** a direct final rule to achieve the same result, that is, to modify its Small Business Size Regulations as proposed here.

DATES: SBA must receive comments to this proposed rule on or before September 12, 2002.

ADDRESSES: Address all comments concerning this rule to Gary M. Jackson, Assistant Administrator for Size Standards, Office of Size Standards, 409 3rd Street, SW., Washington, DC 20416, via email to *sizestandards@sba.gov*, or via facsimile, (202) 205–6390. SBA will make all public comments available to any person or concern upon request.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, at (202) 205–6618 or *sizestandards@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA adopted NAICS industry definitions as a basis for its table of small business size standards effective October 1, 2000. The final rule was published in the **Federal Register** on May 5, 2000 (65 FR 30836) and states the SBA Administrator’s determination that the industry descriptions in NAICS shall be the basis for small business size standards.

OMB restructured and modified parts of NAICS effective January 1, 2002. This rule both incorporates the restructuring and modifications into SBA’s table of size standards. NAICS 2002 is the same as NAICS 1997 for sixteen of the twenty industry sectors. Construction and wholesale trade are substantially changed. NAICS 2002 also modified a number of retail trade classifications and the organization of the information sector.

13 CFR 121.101(b) states ‘‘NAICS is described in the *North American Industry Classification Manual—United States, 1997* * * *.’’ At the time SBA published the final rule in the **Federal Register**, the only description of NAICS available was the NAICS 1997 manual. However, with OMB’s 2002 modification of NAICS 1997, SBA believes that retaining a definition in its regulations based on a particular year is confusing and inconsistent with the

SBA Administrator's determination in the May 5, 2000, **Federal Register** notice, which does not refer to any specific year.

How SBA Arrived at the Size Standards for NAICS 2002 Industries

On October 22, 1999, SBA published in the **Federal Register** (64 FR 57188) a proposed rule to establish a new table of small business size standards based on NAICS. SBA developed guidelines to transition from the Standard Industrial Classification System to NAICS. The guidelines were intended to minimize the impact on SBA's small business size standards. Table A, below, lists those guidelines. SBA received no negative comments to the guidelines specified in the proposed rule. Because the guidelines produced the desired results and received public acceptance, SBA published its final rule on May 5, 2000 (corrected on September 5, 2000, 65 FR 53533), establishing a new table of size standards based on NAICS without change from its proposed rule. For purposes of adopting NAICS 2002, SBA is applying the same guidelines in this rule.

TABLE A

If the NAICS 2002 industry is composed of:	The size standard for the NAICS industry would be:
1. One NAICS 1997 industry or part of one NAICS 1997 industry	The same size standard as for the NAICS 1997 industry or part.
2. More than one NAICS 1997 industry; parts of more than one NAICS 1997 industry; or one more NAICS 1997 industry and part(s) of one or more NAICS 1997 industry, and they all have the same size standard.	The same size standard as for those NAICS 1997 industries or parts of NAICS 1997 industries.
3. More than one NAICS 1997 industry; parts of more than one NAICS 1997 industry; or one or more NAICS 1997 industry and part(s) of one or more NAICS 1997 industry, and they do not all have the same size standard.	The same size standard as for the NAICS 1997 industry or NAICS 1997 industry part(s) that most closely matches the economic activity described by the NAICS 2002 industry.
4. One or more parts of an NAICS 1997 industry for which SBA has established specific size standards (*i.e.,* further segmented).	The same size standard as for that specific NAICS 1997 industry part.
5. One or more NAICS 1997 industries and/or parts of NAICS 1997 industries that were categorized broadly under the NAICS system as Services, Retail Trade, Wholesale Trade or Manufacturing, but are now categorized differently under NAICS.	SBA will (a) apply a size standard measure (*e.g.*, number of employees, annual receipts) typical of the NAICS Sector; and (b) apply the corresponding ''anchor'' size standard. The ''anchor'' size standards are $6 million [effective February 22, 2002] for Services and Retail Trade, 500 employees for Manufacturing and 100 employees for Wholesale Trade (except for Federal procurement programs, where the standard is 500 employees under the non-manufacturer rule).

Changes in Size Standards

Applying the guidelines to the NAICS 2002 restructuring and modifications results in a limited number of changes to current small business size standards. Specifically, there are 12 economic activities within nine (9) NAICS 1997 industries that reflect a size standard change when related to NAICS 2002. Eight (8) of those 12 economic activities increase, three (3) decrease, and for the remaining activity the basis for the size standard changes from annual receipts to number of employees. For the balance of the NAICS 1997 codes and their size standards, there are no size standards changes as a result of the NAICS 2002 reclassifications and recategorizations.

For complete information on the relationship between NAICS 1997 and NAICS 2002, please see the U.S. Bureau of the Census (Census Bureau) Web site at *http://www.census.gov/epcd/naics02/* That Web site contains complete information on the establishment and implementation of NAICS 2002, including the January 16, 2001 (66 FR 3825) **Federal Register** notice of final decision to adopt NAICS 2002. The Census Bureau's Web site also contains three correspondence tables: (1) 2002 NAICS–US matched to 1997 NAICS–US; (2) 1997 NAICS–US matched to 2002 NAICS–US; and (3) 2002 NAICS–US matched to 1987 Standard Industrial Classification.

Table B below identifies the twelve (12) NAICS 1997 industries and economic activities that have revised size standards in the new table based on industries as they are described in NAICS 2002.

TABLE B

NAICS 1997		NAICS 1997 activity	NAICS 2002		NAICS 2002 industry
Code	Size std. ($ million)		Code	Size std. ($ million)	
213112	$6.0	Construction of Field Gathering Lines on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry).	237120	$28.5	Oil and Gas Pipeline and Related Structures Construction.
213112	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry).	238910	12.0	Site Preparation Contractors.
213113	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Coal Mining Industry).	238910	12.0	Site Preparation Contractors.
213114	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Metal Mining Industry).	238910	12.0	Site Preparation Contractors.

TABLE B—Continued

NAICS 1997		NAICS 1997 activity	NAICS 2002		NAICS 2002 industry
Code	Size std. ($ million)		Code	Size std. ($ million)	
213115	6.0	Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Nonmetallic Minerals Industry).	238910	12.0	Site Preparation Contractors.
234990	28.5	Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (Except Cranes) With Operator (three activities of the All Other Heavy Construction Industry).	238910	12.0	Site Preparation Contractors.
234990	28.5	Rental of Cranes With Operator (one activity of the All Other Heavy Construction Industry).	238990	12.0	All Other Specialty Trade Contractors.
235810	12.0	Water Well Drilling Contractors (Entire Industry)	237110	28.5	Water and Sewer Line and Related Structures Construction.
235990	12.0	Indoor Swimming Pools (one activity if the All Other Special Trade Contractors Industry).	236220	28.5	Commercial and Institutional Building Construction.
235990	12.0	Anchored Earth Retention Contractors (one activity if the All Other Special Trade Contractors Industry).	237990	28.5	Other Heavy and Civil Engineering Construction.
514199	6.0	Internet Broadcasting (one activity of the All Other Information Services Industry).	516110	[1]	Internet Publishing and Broadcasting.
561720	14.0	Cleaning Buildings During and Immediately after Construction (one activity of the Janitorial Services Industry).	238990	12.0	All Other Specialty Trade Contractors.

[1] 500 Emp.

The 12 activities with a size standard change moved to seven (7) NAICS 2002 industries. Tables 3 through 9 show the composition of these NAICS 2002 industries and discuss the basis for selecting their size standards.

1. NAICS 236220, Commercial and Institutional Building Construction, $28.5 Million

This industry is the same as NAICS 233320 (NAICS 1997) with the addition of several activities from parts of three other construction (NAICS 1997) industries (see Table 1). Only one activity within the revised industry did not have a size standard of $28.5 million under NAICS 1997. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 1

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Barrack and Dormitory Construction (one activity of the Multifamily Housing Construction Industry)	233220	$28.5
Grain Elevators, Dry Cleaning Plants, and Manufacturing and Industrial Warehouses (activities of the Manufacturing and Industrial Building Construction Industry)	*233310	28.5
Commercial and Institutional Building Construction (entire industry)	*233320	28.5
Indoor Swimming Pools (one activity of the All Other Special Trade Contractors Industry)	*235990	12.0

2. NAICS 237110, Water and Sewer Line and Related Structures Construction, $28.5 Million

This industry is the same as NAICS 234910 (NAICS 1997) with the addition of several heavy construction related activities and the Water Well Drilling industry (see Table 2). Water and sewer line activities constituted a large majority of the previously defined industry. The inclusion of the Water Well Drilling industry accounts for less than 15 percent of the revised industry. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 2

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Water/Sewer Pumping Stations, Sewage Collection and Disposal Lines, Storm Sewers, Sewer/Water Mains and Lines, Water Storage Tanks and Towers, and Construction Management of these Projects (activities of the Water, Sewer, and Pipeline Construction Industry)	234910	$28.5
Irrigation Systems, Sewage Treatment and Water Treatment Plants, Construction Management of these Projects (activities of the All Other Heavy Construction Industry)	*234990	28.5
Water Well Drilling Contractors (entire industry)	235810	12.0

3. NAICS 237120, Oil and Gas Pipeline and Related Structures Construction, $28.5 Million

This is a new industry under the Heavy and Civil Engineering Subsector. It is comprised of activities from parts of three NAICS 1997 industries (see Table 3). All but one activity comprising this new industry had a $28.5 million size standard under NAICS 1997. Therefore, a $28.5 million size standard is adopted for this industry.

TABLE 3

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Construction of Field Gathering Lines on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry)	*213112	$6.0
Gas and Oil Pumping Stations, Gas and Oil Pipeline Construction, Gas Mains, Gas and Oil Storage Tank Construction, and Construction Management of these Projects (activities of the Water, Sewer, and Pipeline Construction Industry)	*234910	28.5
Petrochemical Plants, Refineries, and Construction Management of these Projects (activities of the Industrial Nonbuilding Structure Construction Industry)	*234930	28.5

4. NAICS 237990, Other Heavy and Civil Engineering Construction, $28.5 Million

This industry is the same as NAICS 234990 (NAICS 1997) with a few minor changes (see Table 4). Two activities of parts of two construction industries were added to the previous NAICS 1997 industry and several activities were transferred from NAICS 234990 to other construction industries. Only one activity had a size standard different than $28.5 million under NAICS 1997. The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $28.5 million size standard for this industry is retained.

TABLE 4

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Tunnel Construction (one activity of the Bridge and Tunnel Construction Industry)	*234910	$28.5
All Other Heavy Construction (Except Waste Disposal Plant Construction, Irrigation Systems, Sewage Treatment and Water Treatment Plants, Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental with Operator)	234990	28.5
Anchored Earth Retention Contractors (one activity of the Other Special Trade Contractors Industry)	*235810	12.0

5. NAICS 238910, Site Preparation Contractors, $12.0 Million

This is a revised industry under the Special Trade Contractors Subsector. It is comprised predominately of two Special Trade Contractors industries. In addition, the revised industry includes one activity from parts of four mining support industries, several activities from part of one heavy construction industry, and several activities from parts of two other Special Trade Contractors industries (see Table 5). Because most of the activities of the revised industry are from NAICS 1997 Special Trade Contractors industries, a $12.0 million size standard is adopted for this industry.

TABLE 5

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Oil and Gas Operations Industry)	*213112	$6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Coal Mining Industry)	*213113	6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Metal Mining Industry)	*213114	6.0
Site Preparation and Related Construction Activities on a Contract Basis (one activity of the Support Activities for Nonmetallic Minerals (except Fuels) Industry	*213115	6.0
Right-of-way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (except cranes) with Operator (Activities of the All Other Heavy Construction Industry)	*234990	28.5
Septic Tank, Cesspool, and Dry Well Construction Contractors (Activities of the Plumbing, Heating, and Air-Conditioning Contractors Industry)	*235110	12.0
Excavation Contractors (Entire Industry)	235930	12.0
Wrecking and Demolition Contractors (Entire Industry)	235940	12.0
Dewatering Contractors, Core Drilling for Construction, and Test Drilling for Construction (Activities of the All Other Special Trade Contractors Industry)	*235990	12.0

6. NAICS 238990, All Other Specialty Trade Contractors, $12.0 Million

This industry is the same as NAICS 235990 under NAICS 1997 with a few minor changes. Several activities of the previous NAICS 1997 industry transferred to other construction industries and three activities from parts of three

other industries were incorporated (see Table 6). The activities of the previously defined industry continue to represent most activities in the industry. Therefore, the $12.0 million size standard is retained.

TABLE 6

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard ($ million)
Rental of Cranes with Operator (one activity of the All Other Heavy Construction Industry)	*234990	$28.5
Residential and Commercial Asphalt, Brick, and Concrete Paving) (one activity of the Concrete Contractors Industry)	*235710	12.0
All Other Special Trade Contractors (except Indoor Swimming Pools, Earth Retention Contractors, Forming Contractors, Ornamental Metal Work, Building Equipment Contractors, Building Finishing Contractors, Dewatering Contractors, Core Drilling for Construction, and Test Boring for Construction)	*235990	12.0
Cleaning Buildings During and Immediately after Construction (one activity of the Janitorial Services Industry)	*561720	14.0

7. NAICS 516110, Internet Publishing and Broadcasting, 500 Employees

This is a new industry under NAICS 2002. It is comprised of activities related to the publishing of materials via the Internet (see Table 7). All but one of these activities had a 500 employee size standard under NAICS 1997. Therefore, 500 employees is established for this industry because it represents the most prevalent size standard for the activities within this new industry.

TABLE 7

NAICS 1997 activity	NAICS 1997 code (*=part)	Size standard
Internet Newspaper Publishers (one activity of the Newspaper Publishers Industry)	*511110	500 employees.
Internet Book Publishers (one activity of the Book Publishers Industry)	*511120	500 employees.
Internet Periodical Publishers (one activity of the Periodical Publishers Industry)	*511130	500 employees.
(Internet Directory Publishers (one activity of the Directory and Database Publishers Industry)	*511140	500 employees.
Internet Greeting Card Publishers (one activity of the Greeting Card Publishers Industry)	*511191	500 employees.
All Other Internet Publishers (activities of the All Other Publishers Industry)	*511199	500 employees.
Internet Broadcasting (one activity of the All Other Information Services Industry)	*514199	$6.0 million.

Alternatives to Adopting NAICS 2002 That SBA Considered

SBA considered retaining the NAICS 1997 codes as the basis for small business size standards. However, SBA believes that doing so will lead to inconsistency with other Federal agencies that adopt NAICS 2002 for their programs. More importantly, if SBA does not adopt NAICS 2002 it will not be able to analyze and evaluate small business size standards adequately because available Census Bureau data based on NAICS 2002 industries will not be compatible with NAICS 1997 industry data. Without useful data SBA cannot properly analyze size standards and their effects on businesses.

An alternative to not adopting NAICS 2002 as a basis for size standards is to adopt part(s) of NAICS 2002. SBA believes this alternative is impractical because of the inherent inconsistencies that would result in using industry definitions from two systems.

Consideration of Comments

SBA will consider all comments submitted to this proposed rule. Commenters should address whether they agree SBA should adopt NAICS 2002 and what they believe the impact on small businesses will be. SBA will carefully consider these comments prior to making a final decision on adopting the NAICS 2002.

Other Change

SBA also proposes to make an administrative change to the heading of the size standards table. In the table titled ''Small Business Size Standards by NAICS Industry'' (13 CFR 121.201), SBA is removing ''N.E.C. = Not Elsewhere Classified'' from the heading. ''N.E.C.'' is not used in NAICS because NAICS contains no unclassified industries, unlike the Standard Industrial Classification system.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35.) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

OMB has determined that this rule is not a ''significant'' regulatory action for purposes of Executive Order (E.O.) 12866. This rule incorporates the latest revisions of the NAICS, which is being used by SBA to identify industries in the economy for purposes of establishing small business size standards. As discussed in the preamble, the size standard of a limited number of activities will change as a result the NAICS revisions. Almost all businesses currently defined as small under the NAICS 1997 industries will continue to be small under the NAICS 2002 industries. The rule also affects Federal Government programs that provide a benefit for businesses. SBA welcomes comments describing the impact on small businesses of the size

standard changes resulting from this rule.

Furthermore, SBA was made aware that some Federal Government programs had already begun to use, albeit improperly, the NAICS 2002 codes and assigned small business size standards to them. SBA believes that these actions indicate that Federal agencies expect to use and will readily accept the NAICS 2002 codes.

For purposes of E.O. 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order.

For purposes of E.O. 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule does not impose any new reporting or recordkeeping requirements.

When an agency promulgates a rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) requires the agency to prepare a regulatory flexibility analysis describing the economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. SBA has determined that this rule as drafted, including the alternatives discussed in the supplementary information above, will not have a significant impact on a substantial number of small entities. OMB's modifications are the restructuring and recategorization of the construction and wholesale trade sectors, and a small number of industries in the retail and information sectors. The modifications result in size standards changes to a minimal number of activities within certain NAICS industries detailed above in the supplementary information, with little, if any, effect on small businesses. Those activities now relate to more appropriate NAICS codes.

As part of OMB's restructuring of certain NAICS industries, a small number of specific activities within certain NAICS 1997 codes were classified within NAICS 2002 industries that have size standards different from what they had been in NAICS 1997. They are listed in Table B, above. These activities are very specialized, and the Census Bureau does not publish data on these activities upon which to precisely assess the impact on small businesses. SBA believes that the impact on small businesses is minimal because these activities represent minor components of the NAICS 1997 industries from which they are derived. Only NAICS 235810, Water Well Drilling Contractors, is reclassified in its entirety to an industry with a different size standard, namely NAICS 237110, Water and Sewer Line and Related Structures Construction. Based on 1997 Economic Census data, there were only four water well drilling contractors out of a total of 3,795 that had annual receipts between $12.0 million and $28.5 million. SBA does not consider this number of businesses affected by a size standard change to be substantial.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5); and Sec. 304, Pub. L. 103–403,108 Stat. 4175, 4188.

2. Amend the first sentence of § 121.101(b) to remove ''*1997*''.

3. Amend § 121.201 as follows:

a. In the table ''Small Business Size Standards by NAICS Industry,'' remove the heading ''Description (N.E.C. = Not Elsewhere Classified)'' and add in its place ''NAICS U.S. industry title''.

b. In the table ''Small Business Size Standards by NAICS Industry,'' remove the following three (3) Subsectors together with all entries within those Subsectors: Subsector 233—Building, Developing and General Contracting, Subsector 234—Heavy Construction, and Subsector 235—Special Trade Contractors, and add in their place the following:

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
*	* * * * * * *	
	Subsector 236—Construction of Buildings	
236115	New Single-Family Housing Construction (except Operative Builders)	$28.5
236116	New Multifamily Housing Construction (except Operative Builders)	28.5
236117	New Housing Operative Builders	28.5
236118	Residential Remodelers	28.5
236210	Industrial Building Construction	28.5
236220	Commercial and Institutional Building Construction	28.5
	Subsector 237—Heavy and Civil Engineering Construction	
237110	Water and Sewer Line and Related Structures Construction	28.5
237120	Oil and Gas Pipeline and Related Structures Construction	28.5
237130	Power and Communication Line and Related Structures Construction	28.5
237210	Land Subdivision	6.0
237310	Highway, Street, and Bridge Construction	28.5
237990	Other Heavy and Civil Engineering Construction	28.5

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
Except	Except Dredging and Surface Cleanup Activities	17.0 [2]
	Subsector 238—Specialty Trade Contractors	
238110	Poured Concrete Foundation and Structure Contractors	12.0
238120	Structural Steel and Precast Concrete Contractors	12.0
238130	Framing Contractors	12.0
238140	Masonry Contractors	12.0
238150	Glass and Glazing Contractors	12.0
238160	Roofing Contractors	12.0
238170	Siding Contractors	12.0
238190	Other Foundation, Structure, and Building Exterior Contractors	12.0
238210	Electrical Contractors	12.0
238220	Plumbing, Heating, and Air Conditioning Contractors	12.0
238290	Other Building Equipment Contractors	12.0
238310	Drywall and Insulation Contractors	12.0
238320	Painting and Wall Covering Contractors	12.0
238330	Flooring Contractors	12.0
238340	Tile and Terrazzo Contractors	12.0
238350	Finish Carpentry Contractors	12.0
238390	Other Building Finishing Contractors	12.0
238910	Site Preparation Contractors	12.0
238990	All Other Specialty Trade Contractors	12.0
Except	Base Housing Maintenance [13]	12.0 [13]

c. In the table ''Small Business Size Standards by NAICS Industry,'' remove the following two (2) Subsectors together with all entries within those Subsectors: Subsector 421—Wholesale Trade—Durable Goods and Subsector 422—Wholesale Trade—Nondurable Goods, and add in their place the following:

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
	Subsector 423—Merchant Wholesalers, Durable Goods	
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	100
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	100
42313	Tire and Tube Merchant Wholesalers	100
423140	Motor Vehicle Parts (Used) Merchant Wholesalers	100
423210	Furniture Merchant Wholesalers	100
423220	Home Furnishing Merchant Wholesalers	100
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	100
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	100
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	100
423390	Other Construction Material Merchant Wholesalers	100
423410	Photographic Equipment and Supplies Merchant Wholesalers	100
423420	Office Equipment Merchant Wholesalers	100
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	100
423440	Other Commercial Equipment Merchant Wholesalers	100
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	100
423460	Ophthalmic Goods Merchant Wholesalers	100
423490	Other Professional Equipment and Supplies Merchant Wholesalers	100
423510	Metal Service Centers and Other Metal Merchant Wholesalers	100
423520	Coal and Other Mineral and Ore Merchant Wholesalers	100
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	100
423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	100
423690	Other Electronic Parts and Equipment Merchant Wholesalers	100
423710	Hardware Merchant Wholesalers	100
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	100
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	100
423740	Refrigeration Equipment and Supplies Merchant Wholesalers	100
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	100
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	100
423830	Industrial Machinery and Equipment Merchant Wholesalers	100

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
423840	Industrial Supplies Merchant Wholesalers	100
423850	Service Establishment Equipment and Supplies Merchant Wholesalers	100
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	100
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	100
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	100
423930	Recyclable Material Merchant Wholesalers	100
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers	100
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	100
	Subsector 424—Merchant Wholesalers, Nondurable Goods	
424110	Printing and Writing Paper Merchant Wholesalers	100
424120	Stationery and Office Supplies Merchant Wholesalers	100
424130	Industrial and Personal Service Paper Merchant Wholesalers	100
424210	Drugs and Druggists' Sundries Merchant Wholesalers	100
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	100
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	100
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers	100
424340	Footwear Merchant Wholesalers	100
424410	General Line Grocery Merchant Wholesalers	100
424420	Packaged Frozen Food Merchant Wholesalers	100
424430	Dairy Product (except Dried or Canned) Merchant Wholesalers	100
424440	Poultry and Poultry Product Merchant Wholesalers	100
424450	Confectionery Merchant Wholesalers	100
424460	Fish and Seafood Merchant Wholesalers	100
424470	Meat and Meat Product Merchant Wholesalers	100
424480	Fresh Fruit and Vegetable Merchant Wholesalers	100
424490	Other Grocery and Related Products Merchant Wholesalers	100
424510	Grain and Field Bean Merchant Wholesalers	100
424520	Livestock Merchant Wholesalers	100
424590	Other Farm Product Raw Material Merchant Wholesalers	100
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	100
424690	Other Chemical and Allied Products Merchant Wholesalers	100
424710	Petroleum Bulk Stations and Terminals	100
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	100
424810	Beer and Ale Merchant Wholesalers	100
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	100
424910	Farm Supplies Merchant Wholesalers	100
424920	Book, Periodical, and Newspaper Merchant Wholesalers	100
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	100
424940	Tobacco and Tobacco Product Merchant Wholesalers	100
424950	Paint, Varnish, and Supplies Merchant Wholesalers	100
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	100
	Subsector 425—Wholesale Electronic Markets and Agents and Brokers	
425110	Business to Business Electronic Markets	100
425120	Wholesale Trade Agents and Brokers	100

d. In the table ''Small Business Size Standards by NAICS Industry,'' remove the entry 452110, and add in its place the following:

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
452111	Department Stores (except Discount Department Stores)	$23.0
452112	Discount Department Stores	23.0

e. In the table ''Small Business Size Standards by NAICS Industry,'' remove the entry 454110, and add in its place the following:

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
454111	Electronic Shopping	$21.0
454112	Electronic Auctions	21.0
454113	Mail-Order Houses	21.0

f. In the table ''Small Business Size Standards by NAICS Industry,'' revise the heading ''Subsector 511—Publishing Industries'' to read ''Subsector 511—Publishing Industries (except internet).''

g. In the table ''Small Business Size Standards by NAICS Industry,'' in NAICS 511140 revise ''Database and Directory Publishers'' to read ''Directory and Mailing List Publishers.''

h. In the table ''Small Business Size Standards by NAICS Industry,'' remove the following two (2) Subsectors together with all entries within those Subsectors: Subsector 513—Broadcasting and Telecommunications and Subsector 514 Information Services and Data Processing Services, and add in their place the following:

NAICS codes	NAICS U.S. industry title	Size standards in number of employees or million of dollars
	Subsector 515—Broadcasting (except Internet)	
515111	Radio Networks	$6.0
515112	Radio Stations	6.0
515120	Television Broadcasting	12.0
515210	Cable and Other Subscription Programming	12.5
	Subsector 516—Internet Publishing and Broadcasting	
516110	Internet Publishing and Broadcasting	12.5
	Subsector 517—Telecommunications	
517110	Wired Telecommunications Carriers	1,500
517211	Paging	1,500
517212	Cellular and Other Wireless Telecommunications	1,500
517310	Telecommunications Resellers	1,500
517410	Satellite Telecommunications	12.5
517510	Cable and Other Program Distribution	12.5
517910	Other Telecommunications	21.0
	Subsector 518—Internet Service Providers, Web Search Portals, and Data Processing Services	
518111	Internet Service Providers	21.0
518112	Web Search Portals	6.0
518210	Data Processing, Hosting, and Related Services	21.0
	Subsector 519—Information Services and Data Processing Services	
519110	News Syndicates	6.0
519120	Libraries and Archive	6.0
519190	All Other Information Services	6.0

Dated: August 5, 2002.

Hector V. Barreto,

Administrator.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 190

RIN 3038–AB31

Denomination of Customer Funds and Location of Depositories

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to adopt a new rule that would permit futures commission merchants and derivatives clearing organizations, under certain conditions, to deposit customer funds in foreign depositories and in certain currencies other than United States

dollars. The Commission is also proposing to adopt an amendment to Appendix B of its bankruptcy rules that would govern the distribution of property where the bankrupt futures commission merchant or derivatives clearing organization maintains customer property in depositories outside the United States or in a foreign currency. This new distributional framework is intended to assure that customers whose funds are held in a United States depository will not be adversely affected by a shortfall in the pool of funds held in a depository outside the United States that is due to the sovereign action of a foreign government or court. The proposed rule would replace Financial and Segregation Interpretation No. 12.

DATES: Comments on the proposed new rule and amendments must be received by October 15, 2002.

ADDRESSES: Comments on the proposed rule should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be sent by facsimile transmission to (202) 418–5528, or by e-mail to *secretary@cftc.gov*. Reference should be made to ''Foreign Depositories.''

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Deputy Director, or Michael A. Piracci, Attorney-Advisor, Division of Clearing and Intermediary Oversight, for further information regarding amendments to appendix B of part 190, contact Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

One of the most important functions of the Commodity Exchange Act (the ''Act'') [1] and the rules thereunder is the protection of customer funds. Section 4d(a)(2) of the Act requires that every futures commission merchant (''FCM''):

> treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held.

Prior to 1988, the Commission, and its predecessor agency, the Commodity Exchange Authority, had construed this provision to require that customer funds deposited with an FCM relating to trading on a domestic exchange be held in the United States (''U.S.''), unless the funds were being held for a foreign-domiciled customer.[2] In light of the growing internationalization of the futures and options markets, the Commission in 1988 issued Financial and Segregation Interpretation No. 12 (''Interp. 12''),[3] which provided that, under certain conditions, an FCM may deposit segregated funds of customers domiciled in the U.S. in foreign depositories.

Interp. 12 permits FCMs to hold the funds of customers domiciled in the U.S. offshore if such funds are used to margin positions ''in a contract traded on a domestic contract market that is priced and settled in a foreign currency or accrue to such a customer as a result of positions in such contracts.''[4] Interp. 12 requires that such funds be held in depositories that meet the criteria under Commission Rule 30.7(c) [5] and are located in the country of the applicable currency or a country with which the Commission has an information sharing arrangement. Additionally, FCMs and clearing organizations must obtain from the depository a written acknowledgement of the applicability of Commission regulations regarding the segregation of customer funds required under Commission Rule 1.20.

Under Interp. 12, before an FCM may deposit customer funds offshore, it must obtain an agreement from the customer that authorizes the deposit of the customer's funds into a foreign depository. The agreement must also authorize the ''subordination of the customer's claim attributable to funds held offshore in a particular foreign currency to the claims of customers whose funds are held in [U.S.] dollars or other foreign currencies in the event the FCM is placed in bankruptcy or receivership and there are insufficient funds available for distribution from the funds held in the particular currency to satisfy all customer claims against those funds.''[6] The subordination applies if the insufficiency in funds was a result of the offshore account being underfunded or if all of the funds in the account could not be recovered. For example, the government of the foreign country where the funds are being held may freeze or confiscate the assets or the applicable bankruptcy laws may prevent the full recovery of the funds. An FCM must hold in segregation in the U.S. sufficient funds denominated in U.S. dollars to meet all U.S. dollar-denominated obligations to persons domiciled in the U.S., regardless of whether there are excess funds in segregation in a foreign currency-denominated account.

As stated above, when the Commission issued Interp. 12, it noted that the change in the Commission's interpretation concerning appropriate depositories for segregated customer funds was appropriate ''in light of the growing internationalization of the futures and option markets.''[7] In the more than a dozen years since Interp. 12 was issued, the futures and options markets, along with almost all other segments of the business world, have seen greater internationalization. As a result, there is an increased need and desire of certain customers to be able to more easily conduct business in currencies other than the U.S. dollar.

In the Commodity Futures Modernization Act of 2000 (the ''CFMA''),[8] Congress noted that ''regulatory impediments to the operation of global interests can compromise the competitiveness of [U.S.] business'' and that regulatory policy should be ''flexible to account for rapidly changing derivatives industry practices.'' [9] Due to restrictions placed on holding segregated funds offshore, U.S. markets and futures professionals may find themselves at a disadvantage

[1] 7 U.S.C. 1 *et seq.* (2000).

[2] *See* Commodity Exchange Authority Administrative Determination No. 238 (Sep. 4, 1974); *see also* Foreign Options and Foreign Futures Transactions, 51 FR 12104, note 36 (Apr. 8, 1986); Leverage Transactions, [1982–1984 Transfer Binder] Comm. Fut. L. Rep. ¶ 21,742 at p. 26,952, note 52 (May 25, 1983).

[3] Financial and Segregation Interpretation No. 12—Deposit of Customer Funds in Foreign Depositories, 53 FR 46911 (Nov. 21, 1988). The document was published in the **Federal Register** as a Statement of Agency Interpretation. It was also published in the Commodity Futures Law Reporter at ¶ 7122 together with a series of Financial and Segregation Interpretations issued by the Commission's Division of Trading and Markets.

[4] *Id.* at 46913.

[5] Commission Rules referred to herein are found at 17 CFR Ch. I (2001). Rule 30.7(c) provides that the funds of foreign futures or foreign options customers maintained in a separate account be with a depository that is: ''(1) A bank or trust company located in the United States or as designated; (2) Another person registered as a futures commission merchant; (3) The clearing organization of any foreign board of trade; (4) Any member of such board of trade; or (5) Such member or clearing organization's designated depositories.'' *See also* CFTC Advisory 87–5, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,997 (Dec. 3, 1987) (discussing Rule 30.7(c)).

[6] 53 FR at 46913.

[7] *Id.* at 46912.

[8] Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[9] Section 126(a) of the CFMA.

to their foreign competitors. One of the purposes of the CFMA is to ''enhance the competitive position of [U.S.] financial institutions and financial markets.'' [10] Based upon the foregoing, the Commission is now proposing a rule to permit FCM obligations owed to customers to be denominated in currencies other than the U.S. dollar and to permit FCMs and derivatives clearing organizations (''DCOs'') to hold segregated customer funds in certain foreign depositories, subject to certain restrictions, but without requiring customers to sign a subordination agreement. The Commission previously solicited comments on possible rulemaking in this area.[11]

II. The Proposed New Rule and Amendments

A. Proposed New Rule 1.49

1. Permissible Currencies

The Commission is proposing to adopt Rule 1.49 to provide that FCM obligations owed to customers shall be held in: (1) U.S. dollars; (2) a currency in which funds were deposited by the customer, or converted to at the request of the customer, to the extent of such deposits and conversions; or (3) a currency in which funds have accrued to the customer as a result of trading on a designated contract market or registered derivatives transaction execution facility (''DTF''). Any customer would be able to deposit foreign currency with an FCM if the FCM permits it, not just those customers trading contracts priced and settled in a foreign currency.

As noted above, the internationalization of the futures markets has resulted in customers who, for many different reasons, want funds denominated in currencies other than the U.S. dollar. If a customer or prospective customer of an FCM prefers to deposit funds with an FCM in a currency other than the U.S. dollar, or to convert funds from one currency to another, the FCM should not be prevented from accepting or holding funds in the preferred currency of the customer or prospective customer. An FCM may not convert customer funds from one currency to another without customer authorization. An account agreement could provide, however, that by placing an order in a contract settled in a particular currency, a customer agrees to convert to the appropriate currency funds sufficient to meet the applicable margin requirement. Under the proposed rule, an FCM would be required to prepare and maintain a written record each time customer funds were converted from one currency to another. The record must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount.

The FCM will also be required to make the information contained in this record available to the customer upon the customer's request. The FCM may provide this information through any means agreed upon by the customer and FCM. Additionally, the Commission notes that, pursuant to Rule 1.33(a), the FCM must include this information in the monthly statements provided to the customer.

Another aspect of the internationalization of the futures and options markets is the increasing number of contracts offered on foreign financial instruments and indices. For example, the Chicago Mercantile Exchange offers a futures contract on the Nikkei Stock Average. These contracts are priced and settled in the currency of the underlying instrument or index. Accordingly, accruals resulting from trading in such instruments will be in currency other than U.S. dollars. Under the proposed rule, such accruals may be held in the applicable currency. A customer may, of course, request that such accruals be converted to U.S. dollars.

Currently, pursuant to Interp. 12, customers must authorize the deposit of foreign currency funds into foreign depositories as part of the subordination agreement. The Commission is proposing to eliminate this written authorization requirement.[12] If a customer deposits funds with an FCM in a currency other than U.S. dollars, or requests a conversion of funds to a non-U.S. dollar currency, the customer will be aware of the fact that the funds are being held in a currency other than U.S. dollars. With regard to funds other than U.S. dollars that have accrued to the customer as a result of trading in contracts priced and settled in a non-U.S. currency, the Commission notes that the specifications for contracts traded on designated contract markets are widely known and generally available.[13] Accordingly, when a customer trades in a futures or options contract that is priced and settled in a currency other than U.S. dollars, a customer should be aware that the accruals from such trading may be made in the applicable currency. If a customer has previously not traded in contracts that are priced and settled in a currency other than U.S. dollars, a firm should inform the customer if the accruals from the trades will be held in a currency other than U.S. dollars, at the time the customer places an order that might result in such accruals.[14] FCMs and their associated persons (''APs'') should also be ready to respond to inquiries that any customer may have about accruals or other issues arising in connection with monthly account statements.[15]

2. Location of Depositories

The proposed rule would permit an FCM or DCO to hold customer funds of any denomination in the United States or in any money center country (Canada, France, Italy, Germany, Japan, and the United Kingdom). Hence, customer funds of any denomination could be held in any of the Group of Seven (''G7'') countries. The G7 countries represent the world's largest industrial democracies. Furthermore, representatives from these countries meet several times a year to coordinate their cooperation on issues of economic policy. In this regard, the United States and its financial regulatory agencies have had successful cooperation with the respective financial regulatory agencies of these countries.

An FCM or DCO also could hold any particular currency in the country of origin of that currency,[16] except that customer funds may not be held in any of the restricted countries subject to sanctions by the Office of Foreign Assets and Control (''OFAC'') of the U.S. Department of the Treasury.[17] The rule would further provide that funds could be held outside the United States only to the extent specifically authorized by the customer. Holding funds in each country may pose different risks and different operational costs and benefits.

[10] Section 2(8).

[11] 62 FR 67841 (Dec. 30, 1997).

[12] As discussed below, the proposal would also eliminate the need for a subordination agreement.

[13] For example, the specifications for contracts traded on the Chicago Mercantile Exchange are available on its web site at: *www.cme.com.*

[14] *See, Clayton Brokerage Co.* v. *Commodity Futures Trading Commission,* 794 F.2d 573, 580 (11th Cir. 1986) (providing a customer with the risk disclosure statement does not relieve a broker of any obligation to disclose all material information about risk to customers). With respect to accounts controlled by a registered commodity trading advisor on behalf of a commodity or option customer, the FCM would not need to inform the customer about such accruals.

[15] The basic risk disclosure statement required under Commission Rule 1.55 for customers contemplating trading foreign futures and options includes a warning about currency risks (see paragraph 8), as does the generic risk disclosure statement used internationally (Appendix A to Commission Rule 1.55(c), paragraph 9).

[16] For the Euro, the country of origin includes any country that is a member of the European Union and has recognized the Euro as its official currency.

[17] The list of restricted countries may be viewed on OFAC's web site at *www.ustreas.gov/ofac.*

Therefore, the Commission believes that the customer must be able to choose whether, and to what extent, to incur such risks and costs. The Commission, however, is not establishing a particular format that such an authorization must follow. It is simply requiring that the FCM make and maintain a written record detailing the terms and conditions of any such authorization. No separate customer signature would be required.

FCMs and DCOs should also be aware that the Financial Action Task Force (''FATF'') of the Organization for Economic Co-Operation and Development maintains a list of non-cooperative countries or territories with respect to anti-money laundering programs and that the Secretary of the Treasury may designate, in accordance with Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (''USA PATRIOT'') Act of 2001,[18] certain countries as areas of primary money laundering concern.[19] Before holding any customer funds in a depository in any of these countries or territories, FCMs and DCOs should undertake due diligence to assure themselves that the depository is reputable, has appropriate operational systems to safeguard customer funds, and has an adequate program to deter money laundering.

3. Qualifications of Depositories

Under the proposal, if the depository is located in the U.S., it must be: (1) A bank or trust company; (2) an FCM registered with the Commission; or (3) a DCO. If the depository is located outside the U.S., it must be: (1) A bank or trust company that has (a) in excess of $1 billion in regulatory capital, or (b) commercial paper or long-term debt rated in the highest rating category by at least one nationally recognized statistical rating organization (where the bank or trust company is part of a holding company system, the holding company may satisfy the rating criterion); (2) an FCM registered with the Commission; or (3) a DCO.

Only depositories that provide the FCM or DCO with the written acknowledgment required under Commission Rules 1.20 or 1.26 may hold customer funds required to be segregated.[20] However, a DCO acting as a depository does not need to provide an acknowledgment letter to an FCM where the DCO's rules provide for the segregation of funds held on behalf of customers.[21]

4. Segregation Requirements

As noted above, protection of customer funds is one of the most important purposes of the Act and the Commission's regulations. Customer funds must be segregated so as to assure that the obligations owed to customers will be met. Through segregation, customer funds are readily identifiable in the event that a registrant becomes insolvent. Accordingly, the proposed rule requires that the FCM or DCO, at the close of each business day, have in segregated accounts on behalf of its customers sufficient U.S. dollars held in the U.S. to meet all U.S. dollar obligations and sufficient funds in each other currency to meet obligations in such currency with certain permitted substitutions. The segregation requirements of the proposed rule are meant to ensure that FCMs and DCOs maintain enough funds, and in the appropriate currency, to meet the obligations owed to customers.

As noted, the proposed rule would permit limited substitutions among currencies. U.S. dollars held in the U.S. may be used to meet obligations denominated in any other currency. Money center currencies and U.S. dollars held in money center countries may be held to meet obligations denominated in currencies other than the U.S. dollar. In essence, three tiers of currencies would be established, U.S. dollars held in the U.S. (''Tier I''), U.S. dollars and money center currencies held in money center countries or money center currencies held in the U.S. (''Tier II''), and non-money center currencies (''Tier III''). Tier I currency could be used for any obligation. For U.S. dollar obligations to customers only Tier I currency could be used. Tier II currencies could be used for any obligation except U.S. dollars. Tier III currencies could only be used for obligations denominated in that particular currency.

B. Recordkeeping

The Commission is also proposing to amend Rule 1.32 to require FCMs to compute segregated funds on a currency-by-currency basis if they are held in other than U.S. dollars, in accordance with proposed new Rule 1.49. Under proposed Rule 1.49, customer funds may be held in the United States, a money center country, or the country of origin of the currency. Proposed Rule 1.49 also would require FCMs and DCOs that hold funds in foreign currency or offshore to maintain records sufficient to demonstrate compliance with the additional segregation requirements set forth in proposed paragraph 1.49(e).

C. Bankruptcy

In Interp. 12, the Commission noted two types of risk associated with holding funds offshore that might result in customers failing to fully recover segregated funds, either upon demand or in a bankruptcy or receivership, (1) currency risk and (2) location risk.[22]

Currency risk is the risk of currency exchange rate fluctuations. This can be a concern where an FCM is in bankruptcy or receivership and it holds deposits denominated in currencies other than U.S. dollars. Due to changes in currency exchange rates, the size of the pool of funds available for distribution to customers and the size of claims against the funds may vary from day to day while the bankruptcy is pending, thereby exposing customers with U.S. dollar-denominated claims to currency risk.[23]

Location risk is the risk that funds held in a foreign depository might not be fully recoverable by a customer upon demand or in the event of bankruptcy or receivership. It includes the risk that foreign depositories may not be cooperative with the Commission concerning questions of compliance with segregation requirements, or that a foreign court might refuse to enforce provisions of the Commission's rules that prohibit a foreign depository from offsetting obligations of an FCM against customer funds. There is also a risk that, in the event of an FCM becoming insolvent, deposits at a foreign depository might be subject to an insolvency regime that is different from

[18] Pub. L. No. 107–56.

[19] The list of non-cooperative countries and territories may be viewed on FATF's web site at: *www1.oecd.org/fatf/*. The Secretary of the Treasury has not yet designated any countries as being of primary money laundering concern; however, if such designations are made, the Commission understands that they will be publicly available on the Department of the Treasury web site at: *www.ustreas.gov*.

[20] Commission Rule 1.20 provides that when an FCM or DCO deposits customer funds with a depository the FCM or DCO must obtain and retain a written acknowledgement from the depository that it was informed that the funds are subject to the provisions of the Act and regulations. Rule 1.26 requires an FCM or DCO to obtain such an acknowledgment in regard to the deposit of instruments purchased with customer funds as described under Rule 1.25.

[21] *See* 65 FR 77993, 78009–13 (Dec. 13, 2000) (amending, among other things, Rules 1.20 and 1.26 to provide that a DCO acting as a depository does not need to provide an acknowledgement letter where the DCO's rules provide for the segregation of funds held on behalf of customers); 65 FR 82270 (Dec. 28, 2000) (moving forward the effective date of the amendments to Rule 1.20 and 1.26 to December 28, 2000).

[22] 53 FR at 46912.

[23] *See* 53 FR at 46915 (providing an example of currency risk).

U.S. bankruptcy law. Additionally, a foreign government might limit the availability of funds by freezing or confiscating assets held within its jurisdiction or taking actions that affect their currency, even if the assets are located in the U.S.[24]

Currently, pursuant to Interp. 12, before placing a customer's funds offshore, an FCM must obtain from the customer a subordination agreement. In the agreement, the customer consents to the subordination of claims concerning funds held offshore or in a foreign currency to the claims of customers whose funds are held in U.S. dollars in the U.S. or in other currencies in the event the FCM is placed in bankruptcy or receivership and there are insufficient funds available for distribution from the funds held in that particular currency to satisfy customer claims against those funds. The subordination agreement was meant to protect customers whose funds are held in the U.S. and denominated in U.S. dollars from both currency and location risk that might result in customers receiving less than their pro-rata share of funds.

In Interp. 12, the Commission stated that ''currency risk is similar to the price risk which can occur in cases where an FCM becomes insolvent while holding customer deposits in forms which fluctuate in value,'' using the example of Treasury securities.[25] The Commission noted, however, that there were distinctions between price risk and currency risk, such that it was more equitable to spread the price risk among all customers in the event of a bankruptcy than it was the currency risk. First, the Commission indicated that all customers had the opportunity to post Treasury securities as margin, but under Interp. 12 only customers trading certain contracts could post foreign currency. Second, shortfalls in foreign currency accounts were more likely because of sovereign or location risk. Third, it would be easier and quicker for a trustee or receiver to convert Treasury securities held in the U.S. to cash than to convert foreign currency held offshore into U.S. dollars.

Under proposed rule 1.49, subject to exchange margin rules, any customer may deposit foreign currency with an FCM, not just those trading certain contracts. Additionally, as discussed below, the proposed rule and the amendment to Appendix B of the Commission's bankruptcy rules limit sovereign risk and protect customers who deposit U.S. dollars from being adversely affected due to the sovereign action of a foreign government or court, including the effect of a non-U.S. insolvency regime. While converting Treasury securities held in the U.S. to cash may be quick and easy, converting foreign currency into U.S. dollars or transferring U.S. dollars held offshore to the U.S. is not extremely difficult. This is particularly true in the money center countries. As a result, the Commission believes spreading currency risk among all customers is no less equitable than spreading price risk among all customers.

In this proposal, the Commission has sought to address many aspects of currency and location risks through the safeguards discussed above. One aspect of location risk that remains, however, is sovereign risk. This is the risk that the actions of a foreign government or court might result in a shortfall in segregated funds.

To address sovereign risk, the Commission is proposing to amend Framework 2 of Appendix B of its bankruptcy rules to govern the distribution of customer funds segregated pursuant to the Act and Commission rules thereunder, held by an FCM or DCO in a depository outside the U.S. or in a foreign currency.[26] The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency would result, in certain circumstances, in the reduction of customer claims for such funds.

For purposes of the proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency.

If an FCM filed, or had filed against it, a petition in bankruptcy and maintained customer funds in a depository located in the U.S. in a currency other than U.S. dollars, or in a depository outside the U.S., the following allocation procedure would be used to calculate the claim of each customer. After reducing each customer's claim by the percentage of the shortfall that is not attributable to sovereign action, certain customer claims will be further reduced based upon their exposure to loss attributable to sovereign action. This framework is designed to prevent a shortfall in funds held outside the U.S. or in a currency other than U.S. dollars resulting from the sovereign action of a foreign government or court from adversely affecting customers whose funds are held in U.S. dollars or in the U.S. or in a currency or a country other than the one undertaking the sovereign action resulting in the shortfall.

The proposed rule and the proposed framework to the bankruptcy appendix address the risks associated with holding customer funds outside the U.S. or in currencies other than U.S. dollars. Accordingly, the requirement that each customer who seeks to have funds held outside the U.S. must execute a separate subordination agreement would be eliminated.

III. Request for Comments Regarding the Location of Foreign Futures or Foreign Options Secured Amount

The rule proposed herein would expand the permitted depositories at which customer funds for trading on designated contract markets and registered DTFs could be held. The proposed rule, however, would not be applicable to the funds of U.S. customers for purposes of trading on a foreign board of trade; Commission Rule 30.7 would still govern in that situation.

Rule 30.7 provides, among other things, that an FCM must maintain the funds of foreign futures or options customers, in a separate account, with: (1) A bank or trust company located in the U.S. or as designated; (2) another person registered as an FCM; (3) the clearing organization of a foreign board of trade; (4) any member of such board of trade; or (5) such member or clearing organization's designated depository. To the extent that an FCM wishes to maintain customer funds at a bank or trust company outside the U.S., pursuant to Rule 30.7(c)(1), the Commission must first recognize the depository. The Commission's Division of Trading and Markets, in CFTC

[24] Part of the impetus for Interp. 12 was the fact that, historically, U.S. banks could not pay interest on deposits of foreign currency. Shortly after the issuance of Interp. 12, however, the Board of Governors of the Federal Reserve System permitted U.S. banks to pay interest on foreign currency deposits, increasing the likelihood of such deposits. Presumably, certain sovereign action of a foreign government could affect foreign currency even if held in the U.S. Any discussion of sovereign risk herein pertains to non-U.S. currency, wherever held.

[25] 53 FR at 46915, note 22.

[26] The current Framework 2 sets forth a plan for distribution in the case of trades made on the Chicago Board of Trade-London International Financial Futures and Options Exchange Link (''Link''). Since the Link ceased operations in 1997, there is no need to maintain the existing Framework 2. Accordingly, the Commission is proposing to replace the existing Framework 2 related to Link with a new Framework 2 that addresses U.S. held segregated funds and non-U.S. held segregated funds.

Advisory 87–5,[27] indicated that any bank or trust company located outside the U.S. whose commercial paper or long term debt is rated in one of the two highest rating categories by Standard & Poor's Corporation or Moody's Investors Service, Inc., is automatically deemed recognized. With regard to a bank or trust company located outside the U.S. that is not rated in one of the two highest rating categories by Standard & Poor's Corporation or Moody's Investors Service, Inc., an FCM must file an application for recognition of the subject depository, as set forth in Advisory 87–5.[28]

The Commission seeks comment on whether, in light of the proposed rules herein, Rule 30.7 should also be amended to expand the types of depositories at which an FCM may hold the funds of foreign futures or options customers. In particular, the Commission seeks comment on whether such amendments should permit the holding of customer funds in the same depositories as those permitted under proposed Rule 1.49, or whether there are special circumstances regarding foreign futures and options customers that would require a unique approach.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[29] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[30] The Commission has previously determined that FCMs are not small entities for the purpose of the RFA.[31] Additionally, the Commission has determined that DCOs are not small entities for purposes of the RFA.[32] Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA [33] that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[34] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking contains information or collection requirements. The Commission has submitted a copy of this part to the Office of Management and Budget (''OMB'') for its review.

Collection of Information

Regulations and Forms Pertaining to the Financial Integrity of the Marketplace, OMB Control Number 3038–0024.

The effect of the proposed rules would be to increase the burden previously approved by OMB by 120 hours. The burden associated with the proposed new rule is estimated to be 120 hours, which will result from new recordkeeping requirements for FCMs that, at the request of the customer, convert customer funds to a currency other than that deposited with the FCM and for FCMs that, as authorized by the customer, hold customer funds outside the United States.

The estimated burden of the proposed new rule was calculated as follows:

Estimated number of respondents: 120.

Reports annually by each respondent: 100.

Total annual responses: 12,000.

Estimated average number of hours per response: .01.

Estimated total number of hours of annual burden in fiscal year: 120.

Persons wishing to comment on the information collection requirements that would be required by the proposed rule should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhancing the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418–5160.

C. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed rule and amendments are intended to provide greater flexibility for FCMs, DCOs, and their customers in their methods of doing

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[27] *See* note 5, *supra.* As of July 1, 2002, a reorganization of Commission staff became effective. The Division of Trading and Markets is the predecessor to the Division of Clearing and Intermediary Oversight.

[28] CFTC Advisory 87–5, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 34,496–34,497.

[29] 5 U.S.C. 601 *et seq.*

[30] 47 FR 18618 (April 30, 1982).

[31] 47 FR 18619.

[32] 47 FR 45604, 45609 (Aug. 29, 2001.

[33] 5 U.S.C. 605(b).

[34] 44 U.S.C. 3501 *et seq.*

business. The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15(a) of the Act:

1. *Protection of market participants and the public.* To protect market participants and the public, the proposal requires that depositories used to hold customer funds meet certain requirements to assure that customer funds are dealt with properly. Additionally, the proposal includes a new framework to the bankruptcy appendix to protect customer funds held in U.S. dollars in the U.S. from being diluted if there is an insufficiency in the funds held outside the U.S. or in a currency other than U.S. dollars due to the sovereign action of a foreign government or court.

2. *Efficiency and competition.* The proposed rules are expected to benefit competition and market efficiency. The proposed rule will help to facilitate continued international growth of the futures industry by permitting customer funds to be denominated in currencies other than U.S. dollars and to be held in offshore depositories.

3. *Financial integrity of futures markets and price discovery.* The proposed rules should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets.

4. *Sound risk management practices.* The Commission in proposing the rule and amendments has included risk-limiting features, such as requiring FCMs and DCOs to maintain sufficient funds to meet obligations in each currency, and requiring depositories to meet certain criteria, including signing an acknowledgment regarding the segregation requirements under the Act and Commission rules, to minimize the risks to customer funds.

5. *Other public interest considerations.* The proposed rules and amendments contained herein offer greater opportunity for taking full advantage of contracts being offered by domestic designated contract markets and registered DTFs and the ever increasing internationalization of the futures industry, while establishing safeguards for customer funds.

After considering these factors, the Commission has determined to propose the rule and amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

Lists of Subjects

17 CFR Part 1

Brokers, Commodity Futures, Consumer protection.

17 CFR Part 190

Bankruptcy.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4d, 8a(5), and 20, 7 U.S.C. 2(i), 6d, 12a(5), and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, the Commission hereby proposes to amend chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by the Commodity Futures Modernization Act of 2001, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

2. Section 1.32 is amended by revising paragraph (a) introductory text to read as follows:

§ 1.32 Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of each business day, on a currency-by-currency basis:

* * * * *

3. Section 1.49 is added to read as follows:

§ 1.49 Denomination of customer funds and location of depositories.

(a) *Definitions.* For purposes of this section:

(1) *Money center country.* This term means Canada, France, Italy, Germany, Japan, and the United Kingdom.

(2) *Money center currency.* This term means the currency of any money center country and the Euro.

(3) *Non-money center country.* This term means any country other than a money center country or the United States.

(4) *Non-money center currency.* This term means any currency other than a money center currency or the United States dollar.

(b) *Permissible denominations of obligations.* (1) Subject to the terms and conditions set forth in this section, a futures commission merchant's obligations to a customer shall be denominated:

(i) In the United States dollar;

(ii) In a currency in which funds were deposited by the customer or were converted at the request of the customer, to the extent of such deposits and conversions; or

(iii) In a currency in which funds have accrued to the customer as a result of trading conducted on a designated contract market or registered derivatives transaction execution facility, to the extent of such accruals.

(2)(i) A futures commission merchant shall prepare and maintain a written record of each transaction converting customer funds from one currency to another.

(ii) A written record prepared under paragraph (b)(2)(i) of this section must include the date the transaction was executed, the currencies converted, the amount converted, and the resulting amount.

(iii) The information required under paragraph (b)(2)(ii) of this section must be provided to the customer upon the customer's request.

(c) *Permissible locations of depositories.* (1) Subject to paragraphs (c)(2) and (c)(3) of this section, a futures commission merchant or a derivatives clearing organization may hold customer funds:

(i) In the United States;

(ii) In a money center country; or

(iii) In the country of origin of the currency.

(2) Customer funds may not be held in a restricted country subject to sanctions by the Office of Foreign Assets and Control of the U.S. Department of Treasury.

(3) Customer funds may be held outside the United States only to the extent specifically authorized by the customer. A futures commission merchant must make and maintain a written record detailing the terms and conditions of any such authorization.

(d) *Qualifications for depositories.* (1) To hold customer funds required to be segregated pursuant to the Act and §§ 1.20 through 1.30, 1.32 and 1.36, a depository must provide the depositing futures commission merchant or derivatives clearing organization with the appropriate written acknowledgment as required under §§ 1.20 and 1.26.

(2) A depository, if located in the United States, must be:

(i) A bank or trust company;

(ii) A futures commission merchant registered as such with the Commission; or

(iii) A derivatives clearing organization.

(3) A depository, if located outside the United States, must be:

(i) A bank or trust company:

(A) That has in excess of $1 billion of regulatory capital, or

(B) Whose commercial paper or long-term debt instrument or, if a part of a holding company system, its holding company's commercial paper or long-term debt instrument, is rated in the highest rating category by at least one nationally recognized statistical rating organization;

(ii) A futures commission merchant that is registered as such with the Commission; or

(iii) A derivatives clearing organization.

(e) *Segregation requirements.* (1) Each futures commission merchant and each derivatives clearing organization must, as of the close of each business day, hold in segregated accounts on behalf of commodity or option customers:

(i) Sufficient United States dollars, held in the United States, to meet all United States dollar obligations; and

(ii) Sufficient funds in each other currency to meet obligations in such currency.

(2) Notwithstanding paragraph (e)(1)(ii) of this section, assets denominated in one currency may be held to meet obligations denominated in another currency as follows:

(i) United States dollars may be held in the United States or in money center countries to meet obligations denominated in any other currency; and

(ii) Funds in money center currencies may be held in the United States or in money center countries to meet obligations denominated in currencies other than the United States dollar.

(3) Each futures commission merchant and each derivatives clearing organization shall make and maintain records sufficient to demonstrate compliance with this paragraph (e).

PART 190—BANKRUPTCY RULES

4. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7, 7a, 12, 19, 23, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, unless otherwise noted.

5. Part 190 is amended by revising at the end of Appendix B, Framework 2 to read as follows:

Appendix B to Part 190—Special Bankruptcy Distributions

* * * * *

Framework 2—Special Allocation of Shortfall to Customer Claims When Customer Funds Are Held in a Depository Outside of the United States or in a Foreign Currency

The Commission has established the following allocation convention with respect to customer funds segregated pursuant to the Act and Commission rules thereunder held by a futures commission merchant (''FCM'') or derivatives clearing organization (''DCO'') in a depository outside the United States (''U.S.'') or in a foreign currency. The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency will result, in certain circumstances, in the reduction of customer claims for such funds. For purposes of this proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency. If an FCM enters into bankruptcy and maintains customer funds in a depository located in the U.S. in a currency other than U.S. dollars or in a depository outside the U.S., the following allocation procedures shall be used to calculate the claim of each customer.

I. Reduction in Claims for General Shortfall

A. Determination of Losses Not Attributable to Sovereign Action

1. Convert each customer's claim in each currency to U.S. Dollars at the exchange rate in effect on the Final Net Equity Determination Date, as defined in § 190.01(s) (the ''Exchange Rate'').

2. Determine the amount of assets available for distribution to customers. In making this calculation, *include* customer funds that would be available for distribution but for the sovereign action.

3. Convert the amount of assets available for distribution to U.S. Dollars at the Exchange Rate.

4. Determine the Shortfall Percentage that is *not* attributable to sovereign action, as follows:

$$\text{Shortfall Percentage} = \left(1 - \left[\frac{\text{Total Customer Assets}}{\text{Total Customer Claims}}\right]\right)$$

B. Allocation of Losses Not Attributable to Sovereign Action

1. Reduce each customer's claim by the Shortfall Percentage.

II. Reduction in Claims for Sovereign Loss

A. Determination of Losses Attributable to Sovereign Action (''Sovereign Loss'')

1. If any portion of a customer's claim is required to be kept in U.S. dollars in the U.S., that portion of the customer's claim is not exposed to Sovereign Loss.

2. If any portion of a customer's claim is authorized to be kept in only one location and that location is:

a. The U.S. or a location in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A location in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

3. If any portion of a customer's claim is authorized to be kept in only one currency and that currency is:

a. U.S. dollars or a currency in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A currency in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

4. If any portion of a customer's claim is authorized to be kept in more than one location and:

a. There is no Sovereign Loss in any of those locations, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those locations, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those locations, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss in each such location.

5. If any portion of a customer's claim is authorized to be kept in more than one currency and:

a. There is no Sovereign Loss in any of those currencies, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those currencies, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those currencies, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss.

B. Calculation of Sovereign Loss

1. The total Sovereign Loss for each location is the difference between:

a. The total customer funds deposited in depositories in that location and

b. The amount of funds in that location that are available to be distributed to customers, after taking into account any sovereign action.

2. The total Sovereign Loss for each currency is the difference between:

a. The value, in U.S. dollars, of the funds held in that currency on the day before the sovereign action took place and

b. The value, in U.S. dollars, of the funds held in that currency on the Final Net Equity Determination Date.

C. Allocation of Sovereign Loss

1. Each portion of a customer's claim exposed to Sovereign Loss in a location will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that location}}{\text{All portions of customer claims exposed to loss in that location}}$$

2. Each portion of a customer's claim exposed to Sovereign Loss in a currency will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that currency}}{\text{All portions of customer claim exposed to loss in that currency}}$$

3. A portion of a customer's claim exposed to Sovereign Loss in a location or currency will not be reduced below zero. (The above calculations might yield a result below zero where the FCM kept more customer funds in a location or currency than it was authorized to keep.)

4. Any amount of Sovereign Loss from a location or currency in excess of the total amount of funds authorized to be kept in that location or currency (calculated in accord with Section II.1 above) (''Total Excess Sovereign Loss'') will be divided among all customers who have authorized funds to be kept outside the U.S., or in currencies other than U.S. dollars, with each such customer claim reduced by the following amount:

$$\text{Total Excess Sovereign Loss} \times \left[\frac{\text{(This customer's total claim - The portion of this Customer's claim required to be kept in U.S. dollars, in the U.S.)}}{\text{Total customer claims - Total of all customer claims required to be kept in U.S. dollars, in the U.S.}} \right]$$

The following examples illustrate the operation of this convention. 1. No shortfall in any location:

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	50	U.K.
C	50	Germany.
D	£300	U.K.

Location	Actual asset balance
U.S.	$50
U.K.	£300
U.K.	50
Germany	50

Conversion Rates: 1 = $1; £1=$1.5

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion Rate	Claim in US$
A	$50	1.0	$50
B	50	1.0	50
C	50	1.0	50
D	£300	1.5	450
Total			600

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S	$50	1.0	$50			$50
U.K	£300	1.5	450			450
U.K	50	1.0	50			50

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
Germany	50	1.0	50			50
Total			600		0	600

There are no shortfalls in funds held in any location. Accordingly, there will be no reduction of customer claims.

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$50	$0	$50
B	50	0	50
C	50	0	50
D	450	0	450
Total	600	0	600

2. Shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$100	U.S.
B	50	U.K.
C	100	U.K., Germany, or Japan.

Location	Actual asset balance
U.S	$50
U.K	100
Germany	50

Conversion Rates: 1 = $1.

Reduction in Claims for General Shortfall

There is a shortfall in the funds held in the U.S. such that only ½ of the funds are available. Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$100	1.0	$100
B	50	1.0	50
C	100	1.0	100
Total			250

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S	$50	1.0	$50			$50
U.K	100	1.0	100			100
Germany	50	1.0	50			50
Total			200			200

Determine the percentage of shortfall that is not attributable to sovereign action:
Shortfall Percentage = (1 − 200/250) = (1 − 80%) = 20%.

Reduce each customer's claim by the Shortfall Percentage:

Customer	Claim in U.S.$	Allocated Shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$100	$20.00	$80.00
B	50	10.00	40.00
C	100	20.00	80.00
Total	250	50	200

Reduction in Claims for Shortfall Due to Sovereign Action

There is no shortfall due to sovereign action. Accordingly, the customer claims will not be further reduced.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$80	.....	$80.00
B	40	.....	40.00
C	80	.....	80.00
Total	200	0	200.00

3. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action.

Customer	Claim	Location(s) where customer has consented to have funds held
A	$50	U.S.
B	50	U.K.
C	50	Germany
D	$100	U.S.
D	100	U.K. or Germany.

Location	Actual asset balance
U.S	$150
U.K	100
Germany	100

Conversion Rates: 1 = $1; ¥1=$0.01, £1=$1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in U.S.$
A	$50	1.0	$50
B	50	1.0	50
C	50	1.0	50
D	$100	1.0	100
D	100	1.0	100
Total	.....	.....	350

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$150	1.0	$150	.....	.....	$150
U.K.	100	1.0	100	.....	.....	100
Germany	100	1.0	100	50	$50	50

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
Total			350		50	300

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1−350/350) = (1−100%) = 0%. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$0	$50.00
B	50	0	50.00
C	50	0	50.00
D	200	0	200.00
Total	350	0	350.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, only ½ of the funds in Germany are available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$50		
B		$50	
C			$50
D	100		100
Total	150	50	150

Calculation of the allocation of the shortfall due to sovereign action.
Germany ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$150	33.3% of $50	$16.67
D	$100/$150	66.7% of 50	33.33
Total			50.00

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	$50		$50
B	50		50
C	50	$16.67	33.33
D	200	33.33	166.67
Total	350	50.00	300.00

4. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$100	U.S.
B	50	U.K.
C	150	Germany
D	$100	U.S.
D	£300	U.K.
D	150	U.K. or Germany.

Location	Actual asset balance
U.S	$100
U.K	£300
U.K	200
Germany	150

Conversion Rates: 1=$1; £1=$1.5.

Reduction in Claims for General Shortfall

Convert each customer s claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US $
A	$100	1.0	$100
B	50	1.0	50
C	150	1.0	150
D	$100	1.0	100
D	£300	1.5	450
D	150	1.0	150
Total			1000

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$100	1.0	$100			$100
U.K.	£300	1.5	450			450
U.K.	200	1.0	200			200
Germany	150	1.0	150	100	150	0
Total			900		150	750

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1–900/1000)= (1–90%) = 10%. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$100	$10.00	$90.00
B	50	5.00	45.00
C	150	15.00	135.00
D	700	70.00	630.00
Total	1000	100.00	900.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$100		
B		50	
C			150
D	100	450	150
Total	200	500	300

Calculation of the allocation of the shortfall due to sovereign action.
Germany ($150 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$150/$300	50% of $150	$75

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D	$150/$300	50% of $150	75
Total			150

Claims After Reductions:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A	$90		$90
B	45		45
C	135	$75	60
D	630	75	555
Total	900	150	750

5. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action.

Customer	Claim	Location(s) customer has consented to having funds held
A	$150	U.S.
B	100	U.K.
C	50	Germany.

Customer	Claim	Location(s) customer has consented to having funds held
D	$100	U.S.
D	100	U.K. or Germany.

Location	Actual asset balance
U.S	$250
U.K	50
Germany	100

Conversion Rates: 1 = $1.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$150	1.0	$150
B	100	1.0	100
C	50	1.0	50
D	$100	1.0	100
D	100	1.0	100
Total			500

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$250	1.0	$250			$250
U.K.	50	1.0	50			50
Germany	100	1.0	100			100
Total			400		0	400

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1−400/500) = (1−80%) = 20%. Reduce each customer's claim by the shortfall percentage:

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$150	$30.00	$120.00
B	100	20.00	80.00
C	50	10.00	40.00

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
D	200	40.00	160.00
Total	500	100.00	400.00

Reduction in Claims for Shortfall Due to Sovereign Action

There is no shortfall due to sovereign action. Accordingly, the claims will not be further reduced.

Claims After Reductions

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A	$120.00	.....	$120
B	80.00	.....	80
C	40.00	.....	40
D	160.00	.....	160
Total	400.00	0	400

6. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action, and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	50	U.K.
C	$20	U.S.
C	50	Germany.
D	$100	U.S.
D	£300	U.K.
D	100	U.K., Germany, or Japan.
E	$80	U.S.
E	¥10,000	Japan

Location	Actual asset balance
U.S	$200
U.K	£200
U.K	100
Germany	50
Japan	¥1000

Conversion Rates: 1 = $1; ¥1=$0.01, £1=$1.5.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	50	1.0	50
C	$20	1.0	20
C	50	1.0	50
D	$100	1.0	100
D	£300	1.5	450
D	100	1.0	100
E	$80	1.0	80
E	¥10,000	0.01	100
Total	.....	.....	1000

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actual available
U.S	$200	1.0	$200	.....	.....	$200
U.K	£200	1.5	300	.....	.....	300
U.K	100	1.0	100	.....	.....	100
Germany	50	1.0	50	100	$50	0
Japan	¥10000	0.01	100	50	50	50
Total	.....	.....	750	.....	100	650

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1−750/1000) = (1−75%) = 25%.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in U.S.$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$12.50	$37.50
B	50	12.50	37.50
C	70	17.50	52.50
D	650	162.50	487.50
E	180	45.00	135.00
Total	1000	250.00	750.00

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany and only ½ of the funds in Japan are available.

Customer	Presumed location of funds			
	U.S.	U.K.	Germany	Japan
A	$50	.....	.....	.....
B	.....	$50	.....	.....
C	20	.....	$50	.....
D	100	450	50	$50
E	80	.....	.....	100
Total	250	500	100	150

Calculation of the allocation of the shortfall due to sovereign action.

Germany ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$100	50% of $50 ..	$25
D	$50/$100	50% of $50 ..	25
Total	.....	.....	50

Japan ($50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D	$50/$150	33.3% of $50	$16.67
E	$100/$150	66.6% of $50	33.33
Total	.....	.....	50.00

Claims After Reductions:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Allocation of shortfall due to sovereign action from Japan	Claims after reductions
A	$37.50	.....	.....	$37.50
B	37.50	.....	.....	37.50
C	52.50	$25	.....	27.50
D	487.50	25	$16.67	445.83
E	135.00	.....	33.33	101.67
Total	750.00	50	50.00	650.00

7. Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, where the FCM kept more funds than permitted in such location or currency.

Customer	Claim	Location(s) customer has consented to having funds held
A	$50	U.S.
B	$50	U.S.
B	50	U.K.
C	50	Germany
D	$100	U.S.
D	100	U.K. or Germany
E	$50	U.S.
E	50	U.K.

Location	Actual asset balance
U.S.	$250
U.K.	50
Germany	200

Conversion Rates: 1 = $1.

Reduction in Claims for General Shortfall

Convert each customer's claim in each currency to U.S. dollars:

Customer	Claim	Conversion rate	Claim in US$
A	$50	1.0	$50
B	$50	1.0	50
B	50	1.0	50
C	50	1.0	50
D	$100	1.0	100
D	100	1.0	100
E	$50	1.0	50
E	50	1.0	50
Total	.....	.....	500

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S.	$250	1.0	$250	.....	.....	$250
U.K.	50	1.0	50	.....	.....	50
Germany	200	1.0	200	100%	200	0
Total	.....	.....	500	.....	200	300

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage = (1–500/500) = (1–100%) = 0%.

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A	$50	$0	$50.00
B	100	0	100.00
C	50	0	50.00
D	200	0	200.00
E	100	0	100.00
Total	500	0	500

Reduction in Claims for Shortfall Due to Sovereign Action

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A	$50	.....	.....
B	50	$50	.....
C	.....	.....	$50
D	100	.....	100
E	50	50	.....
Total	250	100	150

Calculation of the allocation of the shortfall due to sovereign action. Germany ($200 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C	$50/$150	33.3% of $200.	$66.67
D	$100/$150	66.7% of $200.	133.33
Total	.....	.....	200.00

This would result in the claims of customers C and D being reduced below zero. Accordingly, the claims of customer C and D will only be reduced to zero, or $50 for C and $100 for D. This results in a Total Excess Shortfall of $50.

Actual shortfall	Allocation of shortfall for customer C	Allocation of shortfall for customer D	Total Excess shortfall
$200	$50	$100	$50

This shortfall will be divided among the remaining customers who have authorized funds to be held outside the U.S. or in a currency other than U.S. dollars.

Customer	Total claims of customers permitting funds to be held outside the U.S.	Portion of claim required to be in the U.S.	Allocation Share (Column B–C / Column B Total—All Customer Claims in U.S.)	Allocation share of actual total excess shortfall	Actual total excess shortfall allocated
B	$100	$50	$50/$200	25% of $50 ..	$12.50
C	50	0	([1])	.....	0
D	200	100	$100/$200	50% of $50 ..	25
E	100	50	$50/$100	25% of $50 ..	12.50
Total	450	.....	.....	.....	50.00

[1] Claim already reduced to $0.

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Allocation of total excess shortfall	Claims after all reductions
Claims after reductions:				
A	$50	.....	.....	$50.00
B	100	.....	12.50	87.50
C	50	50	.....	0.00
D	200	100	25.00	75.00
E	100	.....	12.50	87.50
Total	500	150	50.00	300.00

Issued in Washington, DC, on August 7, 2002, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 02–20471 Filed 8–12–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[IA–007–FOR]

Iowa Abandoned Mine Land Reclamation Plan

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Iowa abandoned mine land reclamation plan (Iowa plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation (DSC) proposes to assume responsibility of the abandoned mine land reclamation (AMLR) emergency program in Iowa. DSC also proposes to revise its AMLR plan in response to a letter sent by OSM (Administrative Record No. AML–IA–39) and to update other portions of its AMLR plan to reflect current practices. Iowa intends to revise the Iowa plan to be consistent with the corresponding Federal regulations and to improve operational efficiency. In addition, we are including in this notice Iowa's proposal to revise its statute.

This document gives the times and locations that the Iowa plan and the amendment to that plan are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t., September 12, 2002. If requested, we will hold a public hearing on the amendment on September 9, 2002. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on August 28, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Iowa plan, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460, Internet: *jcoleman@osmre.gov.*

Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone (618) 463–6460. Internet: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Plan

The AMLR Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Iowa plan on March 28, 1983. You can find background information on the Iowa plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the March 28, 1983, **Federal Register** (48 FR 12711). You can find later actions concerning the Iowa plan and amendments to the plan at 30 CFR 915.25.

II. Description of the Proposed Amendment

By letter dated June 14, 2002 (Administrative Record No. AML-IA–44), Iowa sent us a proposed amendment to its AMLR plan under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment at its own initiative and in response to a letter dated September 26, 1994 (Administrative Record No. AML-IA–39), that we sent to Iowa in accordance with 30 CFR 884.15(d). Iowa intends to revise the Iowa plan to be consistent with the corresponding Federal regulations. In addition, Iowa proposes to revise its statute at Iowa Code, Chapter 207. Below is a summary of the changes proposed by Iowa. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Iowa's Proposed AMLR Plan Revisions

1. Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), we invited states to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

a. The following information, taken from the approved Iowa plan, is included by reference in Iowa's formal submission to us to verify that the Iowa DSC has the statutory authority to assume AMLR emergency program responsibilities:

i. A letter from the Governor that designates the Iowa Department of Soil Conservation as the agency responsible for the AMLR Program in Iowa. By virtue of the state government reorganization in 1986, all the powers of the Department of Soil Conservation were transferred to the new DSC within the Department of Agriculture and Land Stewardship. A final rule codifying this change was published in the **Federal Register** on October 7, 1986 (51 FR 35632).

ii. A legal opinion from the office of the Iowa Attorney General that the Iowa Department of Soil Conservation has the power to administer the AMLR Program in Iowa. By virtue of the state government reorganization in 1986, all the powers of the Department of Soil Conservation were transferred to the new DSC within the Department of Agriculture and Land Stewardship.

iii. A copy of the Iowa Code (IC) 1999 Supplement (IC sections 207.21, .22, .23, .25, and .29). IC section 207.21 states that the DSC shall participate in the AMLR reclamation program and establishes a state reclamation fund under the control of the DSC. IC section 207.29 authorizes the DSC to engage in any work and do all things necessary or expedient, including adoption of rules, to implement and administer the provisions of an abandoned mine reclamation program.

iv. A copy of the Iowa AMLR Program regulations, Iowa Administrative Code (IAC) 27–50.10 through 27–50.190. Iowa's regulations at IAC 27–50.70 provide authorization and procedures for the DSC to enter upon property to perform reclamation where the owner will give voluntary consent. Iowa's regulations at IAC 27–50.90 provide the right for the DSC or its agents, employees or contractors, to enter upon land to perform reclamation activities if consent of the owner cannot be obtained. Procedures are provided for this entry.

b. Iowa submitted the following statement to demonstrate the DSC's technical capability to design and supervise the emergency work:

> DSC has operated a successful AML reclamation program for nearly 20 years. We have completed numerous mine shaft closure projects under that program and have been assisting OSM in its abatement of AML subsidence emergencies since 1995. We have a geotechnical engineer on staff who is familiar with emergency project design practices and we have the ability to prepare project design plans, specifications and contract documents in-house. The DSC staff can also provide in-house project inspection services since emergency projects are normally of short duration. Based on the past experience of the AML Program and the current capabilities of our staff, the Division is seeking authority to assume responsibility for the day-to-day administration of the AML emergency program in Iowa.

c. Iowa proposes to update the following policy and procedure sections of its AMLR plan to reflect that the state has the administrative mechanisms to quickly respond to emergencies either directly or through contractors: Section III. C. Ranking and Selection Procedures (30 CFR 884.13(c)(2)); Section III. G. Rights of Entry (30 CFR 884.13(c)(6)); and Section IV. C. Purchasing and Procurement Systems (30 CFR 884.13(d)(3)).

2. Iowa proposes to amend the following sections in its AMLR plan: Section III. A. Purposes of the State Reclamation Program (30 CFR 884.13(c)(1)); Section III. B. Identification of Eligible Land and Water (30 CFR 884.13(c)(2)); Section III. C. Ranking and Selection Procedures (30 CFR 884.13(c)(2)); Section III. D. Coordination of Reclamation Work (30 CFR 884.13(c)(3)); Section III. E. Acquisition, Management, and Disposition of Land and Water (30 CFR 884.13(c)(4)); Section III. F. Reclamation on Private Land (30 CFR 884.13(c)(5)); Section III. H. Public Participation Policies (30 CFR 884.13(c)(7)); Section IV. A. Organizational Structure (30 CFR 884.13(d)(1)); Section IV. B. Personnel Policies (30 CFR 884.13(d)(2)); Section IV. C. Purchasing and Procurement Systems (30 CFR 884.13(d)(3)); Section IV. D. Management Accounting (30 CFR 884.13(d)(4)); Section V. B. AML Problem Descriptions (30 CFR 884.13(e)(2)); and Section V. C. AML Corrective Measures (30 CFR 884.13(e)(3)).

B. Iowa's Proposed Statute Revisions

Iowa proposes to amend the following sections in its statute at Iowa Code, Chapter 207: Section 207.21 regarding lands and water eligible for reclamation or drainage abatement expenditures under the AMLR program and the priority order for expending the moneys; and Section 207.23 regarding liens. Iowa also proposes to add new Section 207.29 Powers and Authority.

III. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Iowa plan.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Mid-Continent Regional Coordinating Center may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: [IA–007–FOR]'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463–6460.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the

beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on August 28, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884 of the Federal regulations.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of abandoned mine reclamation programs. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

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

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

National Environmental Policy Act

This rule does not require an environmental impact statement because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 24, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 02–20464 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[IA–011–FOR]

Iowa Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Iowa proposes revisions to rules about inspections and enforcement. Iowa intends to revise its program to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Iowa program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.d.t., September 12, 2002. If requested, we will hold a public hearing on the amendment on September 9, 2002. We will accept requests to speak at a hearing until 4 p.m., c.d.t., on August 28, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Iowa program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460, Internet: *jcoleman@osmre.gov.*

Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone: (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background on the Iowa Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Iowa program effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the January 21, 1981, **Federal Register** (46 FR 5885). You can also find later actions concerning the Iowa program and program amendments at 30 CFR 915.10, 915.15, and 915.16.

II. Description of the Proposed Amendment

By letter dated June 14, 2002 (Administrative Record No. IA–447), Iowa sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Iowa sent the amendment in response to a letter dated June 17, 1997 (Administrative Record No. IA–440), that we sent to Iowa in accordance with 30 CFR 732.17(c). Below is a summary of the changes proposed by Iowa. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Iowa proposes to revise its program at Part 7, Rule 27–40.71(207), at 27 Iowa Administrative Code, Chapter 40 to incorporate by reference 30 CFR 840.11, as in effect on July 1, 2001. Currently, Iowa's provision incorporates by reference 30 CFR 840.11, as in effect on July 1, 1992.

III. Public Comment Procedures

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

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Mid-Continent Regional Coordinating Center may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: [IA–011–FOR]'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463–6460.

Availability of Comments

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

organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t., on August 28, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

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

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12988—Civil Justice Reform

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

Executive Order 13132—Federalism

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

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

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 25, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 02–20465 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–048–FOR]

Texas Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of revisions to a previously proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions concern corrections of incorrect reference citations and the addition of two sentences to the proposed definition of ''valid existing rights (VER).'' Texas intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4 p.m., c.d.t., August 28, 2002.

ADDRESSES: You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

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

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, P. O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Discussion of the Proposed Amendment

By letter dated July 25, 2001 (Administrative Record No. TX–653.02), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment in response to our letter dated August 23, 2000 (Administrative Record No. TX–653), that we sent to Texas under 30 CFR 732.17(c). Texas proposed to amend Title 16, Texas Administrative Code, Chapter 12.

We announced receipt of the amendment in the September 20, 2001, **Federal Register** (66 FR 48396). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on October 22, 2001.

During our review of the amendment, we identified incorrect reference citations and a concern regarding Texas' proposed definition of ''valid existing rights.'' We notified Texas of these concerns by email dated September 24, 2001 (Administrative Record No. TX–653.04). By letters dated October 22, 2001, and June 5, 2002 (Administrative Record Nos. TX–653.05 and TX–653.06, respectively), Texas sent us additional explanatory information and revisions to its program amendment.

Texas corrected the incorrect reference citations that we identified. The state also submitted a revision for its proposed definition of ''valid existing rights'' found at section 12.3(187). In paragraph (A) of this definition, Texas proposed to add two sentences so that the definition reads as follows:

(A) Property rights demonstration. Except as provided in subparagraph (C) of this definition, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of § 12.71(a) of this title or § 134.022 of the Act. Applicable State statutory or case law will govern interpretation of documents relied upon to establish property rights. If no applicable State law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.

III. Public Comment Procedures

We are reopening the comment period on the proposed Texas program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Texas program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the administrative record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS NO. TX–048-FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received

your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (*see* **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative 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.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

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

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The taking implications assessment for the Federal valid existing rights rule appears in Part XXIX.E. of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 13132—Federalism

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

Executive Order 12988—Civil Justice Reform

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

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

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

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

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 25, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 02–20466 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA246–0353b; FRL–7254–9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) and

Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from miscellaneous metal parts coating, aerospace assembly and component manufacture and coating, pleasure craft coating and boatyard operations, and resin manufacturing. 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 September 12, 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;

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765; and,

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA, 93993.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SCAQMD Rule 1141—Control of Volatile Organic Compound Emissions From Resin Manufacturing; SCAQMD Rule 1124—Aerospace Assembly and Component Manufacturing Operations; SCAQMD Rule 1107—Coating of Miscellaneous Metal Parts and Products; and, VCAPCD Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations. 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 16, 2002.

Keith Takata,

Associate Regional Administrator, Region IX.

[FR Doc. 02–20350 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 143–1b; FRL–7249–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) approves into the Indiana State Implementation Plan (SIP) revisions to the Indiana Administrative Code. These regulatory updates change rule language concerning Indiana's permitting programs. Included in this submittal is a provision to assure that applicable requirements exist independently of title V permits. EPA is proposing to approve these rules because they are consistent with EPA's regulations governing State permit programs.

In a separate action in the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving these revisions into the State Implementation Plan as a direct final rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. The EPA has explained reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse written comments, EPA will take no further action on this proposed rule. If EPA receives adverse written comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by September 12, 2002.

ADDRESSES: Written comments should be addressed to Ms. Pamela Blakley, Chief, Permits and Grants Section (IL/IN/OH), Attention: Mr. Sam Portanova, at the EPA Region 5 office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following location: Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Anyone wanting to examine these documents should make an appointment at least two working days in advance by contacting Sam Portanova.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, Environmental Engineer, Permits and Grants Section (IL/IN/OH), Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, telephone (312) 886–3189.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Rule which is published in the Rules and Regulations section of this **Federal Register**.

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

Dated: June 28, 2002.

Jo Lynn Traub,

Acting Regional Administrator, Region 5.

[FR Doc. 02–20346 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[ID–02–002; FRL–7258–7]

Approval and Promulgation of Implementation Plans; Idaho Designation of Areas for Air Quality Planning Purposes; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA invites public comment on its proposal to approve numerous revisions to the State of Idaho Implementation Plan submitted to EPA by the Director of the Idaho Department of Environmental Quality (IDEQ), on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999,

December 5, 2000, and May 30, 2002. The revisions were submitted in accordance with the requirements of section 110 and part D of the Clean Air Act (hereinafter the Act). EPA is taking no action in this rulemaking on a number of submitted rule provisions which are unrelated to the purposes of the implementation plan, including the Idaho provisions for implementing the Title V operating permit program.

EPA also invites public comment on its proposal to revoke the total suspended particulates (TSP) area designations for Idaho in 40 CFR part 81 and adjust the PM–10 area designations to conform to the requirements of EPA's prevention of significant deterioration (PSD) regulations.

DATES: Written comments must be received on or before September 12, 2002.

ADDRESSES: Written comments should be addressed to: David C. Bray, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho, Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706–1255.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ–107), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

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I. Background

On November 15, 1990, Congress amended the Clean Air Act (CAA) to require, among other things, revisions to state implementation plans (SIPs) to attain and maintain the National Ambient Air Quality Standards (NAAQS) in areas which violate those standards (nonattainment areas). Under the provisions of the Act, revisions to title I, part D (nonattainment area) new source review (NSR) rules were required to be submitted by June 30, 1992 for PM–10 nonattainment areas, by November 15, 1992 for most ozone and carbon monoxide nonattainment areas, and by November 15, 1993 for the remainder of the ozone and carbon monoxide nonattainment areas. IDEQ amended its part D NSR rules on April 8, 1994 and submitted them to EPA on May 17, 1994 as a revision to the Idaho SIP.

The Clean Air Act Amendments of 1990 also established a new Title V which requires States to develop operating permit programs for most stationary sources. Although Title V operating permit programs are not intended to be part of the SIP, many provisions of the SIP interact closely with the Title V operating permit program. As such, Idaho, like many States, revised provisions of its SIP to facilitate and improve the relationship between the Idaho SIP and Title V operating permit program. In addition, since EPA last approved the Idaho SIP in 1993, Idaho has revised nearly every section of its air quality rules to some degree. Many of these amendments have been editorial and are renumberings, changes to citations for cross-referenced rules or statutes, changes in terminology, or grammatical corrections. Finally, during the 2000 legislative session, the Idaho Division of Environmental Quality became a separate department rather than a division of the Idaho Department of Health and Welfare, which remained a separate department. *See* Idaho Code sections 39–102A and 39–104. At the same time, IDEQ was given the SIP authorities previously held by the Department of Health and Welfare. *See* Idaho Code sections 39–108 to 39–118D. As a result, Idaho has renumbered and recodified all of its air quality regulations in a new IDAPA Chapter 58. IDEQ has submitted these various revisions to its rules for air pollution sources to EPA on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1997, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, as revisions to the Idaho SIP.

II. Discussion of SIP Submittal

A. Description of SIP Submittals

On May 17, 1994, the Director of the IDEQ submitted IDAPA 16, Title 01, Chapter 01 ''Rules for the Control of Air Pollution in Idaho'' (with the exception of sections 009, 010, 140 through 149, 161, 203.03, 210, 220.05, 221.04.a.i, 222.04.b, 225, 585, 586, 587, 590, 591, and 855 through 858), as amended on May 1, 1994, as a revision to the Idaho SIP. On May 11, 1995, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 008, 313, 314, 525, 526, 527, 530, and 537; and new sections 317 and 470), as amended on March 3, 1995, March 7, 1995, and May 1, 1995, as revisions to the Idaho SIP. On November 21, 1996, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 130, 131, 132, 133, 134, 135, 136, 209, 220, 222, 313, 314, and 332; and the rescission of sections 326 through 331), as amended on November 4, 1996, as revisions to the Idaho SIP. On February 28, 1997, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to section 107), as amended on February 28, 1997, as revisions to the Idaho SIP. On December 18, 1997, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 007, 125, 126, 136, 201, 202, 205, 209, 213, 787, and 788), as amended on November 17, 1997, as revisions to the Idaho SIP. On April 9, 1998, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 006, 008, 107, 202, 577, 579, 581, and 751), as amended on June 21, 1996, and amendments to IDAPA 16, title 01, chapter 01, section 107, as amended on February 12, 1998, as revisions to the Idaho SIP. On May 5, 1999, the Director submitted amendments to IDAPA 16, title 01, chapter 01 (specifically, changes to sections 006, 007, 008, 107, 122, 128, 130, 131, 132 through 136, 155, 157, 160, 200, 201 through 202, 204 through 205, 208, 209, 210, 213, 220 through 223, 401, 402, 404, 440 through 441, 460 through 461, 511 through 513, 526 through 527, 537, 553, 556, 560 through 561, 575, 577, 579, 580 through 581, 590, 600, 612, 613, 625, 626, 675, 679, 681, 700, 701 through 703, 725, 786, 824, 846, and 847), as amended on November 12, 1998 and April 22, 1999, as revisions to the Idaho SIP. On December 5, 2000, the Director submitted amendments to IDAPA 16, Title 01, Chapter 01 (specifically, changes to sections 008, 107, 128, 201, 301, 313, 586, and new sections 563 through 574), as amended on November 18, 1999, October 18, 2000, and November 9, 2000, as revisions to the

Idaho SIP. Note that IDAPA 16 was recodified as IDAPA 58 prior to the December 5, 2000 submittal. Finally, on May 30, 2002, the Director submitted amendments to IDAPA 58, Title 01, Chapter 01 (specifically, changes to sections 552, 553, 556, 558, and 561) as amended on November 8, 2001, as revisions to the Idaho SIP.

As discussed above, the Idaho rules have been renumbered and recodified and numerous editorial and technical changes have been made throughout. The following sections of the amended rules include substantive changes to the respective sections of the currently-approved SIP: Section 107 INCORPORATION BY REFERENCE; Section 121 COMPLIANCE REQUIREMENTS BY DEPARTMENT; Section 128 CONFIDENTIAL INFORMATION; Sections 130 through 136 STARTUP, SHUTDOWN, SCHEDULED MAINTENANCE, SAFETY MEASURES, UPSET AND BREAKDOWN; Section 157 SAMPLING AND ANALYTICAL PROCEDURES; Section 160 PROVISIONS GOVERNING SPECIFIC ACTIVITIES AND CONDITIONS; Sections 200 through 224 PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT; Sections 400 through 406 PROCEDURES AND REQUIREMENTS FOR TIER II OPERATING PERMITS; Section 440 REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES); Section 441 DEMONSTRATION OF AMBIENT EQUIVALENCE; Section 460 REQUIREMENTS FOR EMISSION REDUCTION CREDIT; Section 461 REQUIREMENTS FOR BANKING EMISSION REDUCTION CREDITS; Sections 550 through 562 AIR POLLUTION EMERGENCY RULE; Section 575 AIR QUALITY STANDARDS AND AREA CLASSIFICATION; Section 577 AMBIENT AIR QUALITY STANDARDS FOR SPECIFIC AIR POLLUTANTS; Section 579 BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION; Section 580 CLASSIFICATION OF PREVENTION OF SIGNIFICANT DETERIORATION AREAS; and Section 581 PREVENTION OF SIGNIFICANT DETERIORATION INCREMENTS.

The amended rules also include the following new sections which are revised and recodified provisions from the previous rules: Section 005 DEFINITIONS; Section 006 GENERAL DEFINITIONS; Section 007 DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 225 AND 400 THROUGH 461; and Section 700 PARTICULATE MATTER—PROCESS WEIGHT LIMITATIONS.

The amended rules include the following entirely new sections: Section 002 WRITTEN INTERPRETATIONS; Section 003 ADMINISTRATIVE APPEALS; Section 004 CATCHLINES; Section 106 ABBREVIATIONS; Section 008 DEFINITIONS FOR PURPOSES OF SECTIONS 300 THROUGH 387; Section 122 INFORMATION ORDERS BY THE DEPARTMENT; Section 123 CERTIFICATION OF DOCUMENTS; Section 124 TRUTH, ACCURACY AND COMPLETENESS OF DOCUMENTS; Section 125 FALSE STATEMENTS; Section 126 TAMPERING; Section 213 PRE-PERMIT CONSTRUCTION, Sections 300 through 387 PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS; Section 470 PERMIT APPLICATION FEES FOR TIER II PERMITS; Sections 563 through 574 TRANSPORTATION CONFORMITY; Section 582 INTERIM CONFORMITY PROVISIONS FOR NORTHERN ADA COUNTY FORMER NONATTAINMENT AREA; Section 681 TEST METHODS AND PROCEDURES; and Section 703 PARTICULATE MATTER—OTHER PROCESSES. Finally, the amended rules delete the following sections of the current EPA-approved SIP: Section 01.01001 POLICY; Section 01.01052.03 CRITERIA FOR DEFINING EPISODE STAGES; Section 01.01503 DESIGN STANDARDS; Sections 01.01551 to 01.01553 RULES FOR CONTROL OF MOTOR VEHICLES; Section 01.01996 ADMINISTRATIVE PROVISIONS; Section 01.01998 INCLUSIVE GENDER AND NUMBER; and Section 01.01999 SEVERABILITY.

B. Key Changes to Idaho's SIP

Included in the docket for this SIP action is a table showing all of the provisions of IDAPA Chapter 16, now codified at IDAPA Chapter 58, and showing the type of change made to the provisions (*e.g.,* new section, amended, editorial change, unchanged, relocated, deleted). The table also indicates those provisions that were not submitted by IDEQ as part of a SIP revision and those provisions that were submitted as part of a SIP revision but on which EPA is taking no action. For example, several provisions or parts of IDEQ's air rules are not designed to attain and maintain the NAAQS, but instead are designed to implement other CAA programs, such as the Title V air operating permits program, New Source Performance Standards (NSPS), and National Emissions Standards for Hazardous Air Pollutants (NESHAPs), or are designed to implement other provisions of State law, and are not appropriate for inclusion in the SIP.

In addition, the docket includes a Technical Support Document (TSD), which describes in more detail the substantive changes to the Idaho rules that have been submitted by Idaho as revisions to the SIP, EPA's evaluation of how these rules comply with EPA's minimum requirements for SIPs, and the basis for EPA's proposed action. A summary of the key changes to Idaho's rules and EPA's proposed action follows.

1. Excess Emissions Rules

IDEQ has substantially revised its provisions addressing excess emissions attributable to startup, shutdown, scheduled maintenance, safety measures, upset, and breakdown. Previously, excess emissions due to such events were not deemed to be violations if such events were promptly reported and reasonable corrective actions were taken with all practicable speed. As revised, sections 130 to 136 establish procedures and requirements that must be followed in all cases of excess emissions due to such events, including the filing of procedures to be taken to minimize emissions, prompt reporting of excess emissions, and taking prompt corrective action. Idaho's rules make clear, however, that emissions in excess of emission limits are considered violations and are not automatically excused. Instead, section 131 contains criteria to be used in determining whether the Department should take enforcement action to impose penalties for excess emissions due to such events. EPA believes Idaho's provisions for excess emissions are consistent with EPA's interpretation of the CAA, as set forth in a guidance document EPA issued to States regarding excess emissions during startup, shutdown, and malfunctions. *See* Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Monitoring, and Robert Perciasepe, Assistant Administrator for Air And Radiation, to the Regional Administrators, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999).

2. Permit to Construct Rules

EPA is proposing to approve those portions of IDAPA 58, Title 01, Chapter 01 that relate to the permitting of new and modified stationary sources (specifically, Section 000. LEGAL AUTHORITY; Section 002. WRITTEN INTERPRETATIONS; Section 003. ADMINISTRATIVE APPEALS; Section 006. DEFINITIONS; Section 007

DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 225 AND 400 THROUGH 461; Section 107. INCORPORATIONS BY REFERENCE, subsections .03.a., 03.e., .03.f., and .03.i.; Sections 200 through 222. PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT (except for subsection 222.03); Section 460. REQUIREMENTS FOR EMISSION REDUCTION CREDIT; Section 461. REQUIREMENTS FOR BANKING EMISSION REDUCTION CREDITS (ERC'S); Sections 510 through 516. STACK HEIGHTS AND DISPERSION TECHNIQUES; Section 578. DESIGNATION OF ATTAINMENT, UNCLASSIFIABLE, AND NONATTAINMENT AREAS; Section 579. BASELINES FOR PREVENTION OF SIGNIFICANT DETERIORATION; Section 580. CLASSIFICATION OF PREVENTION OF SIGNIFICANT DETERIORATION AREAS; and Section 581. PREVENTION OF SIGNIFICANT DETERIORATION INCREMENTS).

The current SIP-approved permit to construct rules have been amended throughout, primarily to bring them up to date with EPA's current regulations, to make them more consistent with EPA requirements for construction permits, and to make them more consistent with the Title V operating permit program. The majority of the amendments involve the permit to construct provisions for major stationary sources and major modifications (the prevention of significant deterioration (PSD), nonattainment area (part D), and visibility protection programs). Changes have been made to the applicability provisions (section 201), application requirements (section 202), permit requirements for new major facilities and major modifications in nonattainment areas (section 204), permit requirements for new major facilities and major modifications in attainment or unclassifiable areas (section 205), requirements for emission reduction credit (section 207), demonstration of net air quality benefit (section 208), procedures for issuing permits (section 209), and conditions for permits to construct (section 211). EPA has reviewed these amendments and finds them to be consistent with the requirements of EPA's regulations, specifically, 40 CFR 51.160 through 51.164 for minor source construction permits, 40 CFR 51.165 for nonattainment area (part D) permits, 40 CFR 51.166 for PSD permits, and 40 CFR 51.301 and 51.307 for visibility protection permits to construct.

Two new provisions of the Idaho permit to construct rules, however, require specific consideration—Section 213. PRE-PERMIT CONSTRUCTION, and sections 220 through 222, which provide exemptions from the minor source permits-to-construct rules.

Construction Prior to Final Permit Issuance. Section 213, entitled ''Pre-Permit Construction,'' allows construction to commence on certain non-major sources and non-major modifications prior to receiving a final permit to construct, provided certain conditions are met. EPA believes that this provision is consistent with the requirements of section 110(a)(2)(C) of the CAA and 40 CFR 51.160, including 40 CFR 51.160(b), which requires States to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS. Idaho's ''Pre-Permit Construction'' provision has numerous requirements and safeguards to ensure that no major source or major modification would be allowed to commence construction prior to receiving its final permit to construct. Furthermore, Idaho's rule does not allow sources which propose to ''net out'' of major NSR, use offsets to mitigate unacceptable ambient impacts, or which could impact a Class I area, to commence construction prior to receiving final permits. The provision also includes numerous requirements which are intended to limit its applicability to sources which have sufficiently demonstrated that they will be able to comply with all requirements and therefore will be able to receive a final permit to construct. These include more comprehensive and rigorous permit applications (including dispersion modeling meeting EPA's Guideline for Air Quality Models) than would normally be required of minor sources and minor modifications; a requirement to hold a public meeting in the community; and written approval of the Department before it can commence construction on this provision. Importantly, the provision precludes any actual operation of the new or modified source before the final permit to construct is issued. Finally, the provision includes language intended to prevent sources from making equitable arguments should the final permit be denied, or include conditions inconsistent with the application to construct. The provision also makes it clear that if the permit is ultimately denied, the source has been in violation of the requirement to have a permit from the date that it actually commenced construction. It is important to note that Idaho does not have a requirement for a case-by-case control technology determination (*e.g.,* BACT) for new or modified minor sources, so the likelihood of equity in the ground arguments are significantly reduced.

Idaho's ''Pre-Permit Construction'' provision would allow sources which are requesting limits on their potential to emit (PTE) (both greenfield sources proposing to be synthetic minors and existing sources proposing to limit the PTE of a modification) to commence construction prior to receiving final permits to construct. Under the terms of this provision, the written approval issued by IDEQ is an administrative action that makes the PTE limits requested by the source enforceable by the State. However, since the written approval is not a final permit to construct and has not been through the public notice and comment process, it is not federally enforceable. But because Federal law does not currently require that PTE limits be federally enforceable to be effective in limiting a source's potential to emit, EPA believes that this aspect of the Idaho provision meets EPA's current requirements. (Note that permits to construct issued under the EPA-approved Idaho rules are federally enforceable in accordance with section 113 of the Act.)

Although this provision is somewhat different than the traditional minor new source review programs in most States, EPA believes it is consistent with the requirements of the CAA and EPA's regulations, and is therefore approvable as a SIP revision. Section 110(a)(2)(C) of the CAA requires that State SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are achieved. This Idaho provision clearly regulates the construction and modification of stationary sources and ensures that the NAAQS will be met for any source which is allowed to commence construction prior to obtaining a final permit to construct.

In addition, EPA's regulations do not require the issuance of a permit for the construction or modification of minor sources, but only that the SIP include a procedure to prevent the construction of a source or modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS. SIP minor NSR programs in several States do not require permits prior to construction, but instead require sources to submit a notice and authorize sources to begin construction after a specified time if the permitting authority does not issue an order preventing construction. As discussed above, this Idaho provision

includes enforceable procedures to prevent the construction of any source or modification that would violate SIP requirements or the NAAQS because a source cannot begin actual construction unless it has received an approval from the State in the form of either a written approval under this provision or an actual permit to construct. In fact, the permit application requirements of Idaho's ''Pre-Permit Construction'' provision are more stringent than those of Idaho's general minor NSR provisions, and sources which utilize this pre-permit construction provision must meet a higher hurdle than other minor NSR permit applicants in Idaho in demonstrating that they comply with all requirements.

While EPA has some concerns regarding the implementation of this provision, it nevertheless meets EPA's requirements for a minor source permit to construct rule. However, in order to ensure that sources do not inappropriately begin construction using this provision, EPA is proposing to approve this rule with the condition that IDEQ submit to EPA, within five (5) working days of issuance, copies of all written approvals, draft permits, and final permits for sources which utilize this provision. EPA specifically invites comments on the appropriateness of approving this provision into the Idaho SIP.

''De Minimis'' Exemptions from minor NSR. The Idaho permit to construct rules exempt non-major sources from permitting requirements if they meet *all* of several criteria. These criteria are:

(1) The source's uncontrolled potential to emit must be less than 100 tpy (section 220.01.a.i);

(2) the source's uncontrolled potential to emit must not increase emissions of a major facility by more than the significant emission rates (section 220.01.a.ii);

(3) the modeled impact of the source's uncontrolled potential to emit must not cause or contribute to a NAAQS violation (section 220.01.a.iii);

(4) the source cannot be part of a new major facility or a major modification of an existing major facility (section 220.01.b); and

(5) either the controlled potential emissions must be ''below regulatory concern,'' which is generally defined as less than 10% of the significant emission rates (section 221) or the source must be on a list of categorically exempt sources (section 222).

EPA believes States may exempt from minor new source review certain categories of changes based on *de minimis* or administrative necessity grounds in accordance with the criteria set out in *Alabama Power Co.* v. *Costle, 636 F.2d 323* (D.C. Cir. 1979). *De minimis* sources are presumed not to have an impact and their emissions would not prevent or interfere with attainment of the NAAQS, even within nonattainment areas. Criteria (1), (2), (4), and (5) set forth above are generally consistent with the approaches used by other States to exempt minor sources and minor modifications from permit to construct requirements. These provisions are intended to ensure that all major sources and major modifications are subject to permit to construct requirements and that only *de minimis* sources are exempted.

Criteria (3) and one aspect of criteria (5), however, merit further discussion. Criteria (3), section 220.01.a.iii. requires that, to be exempt from minor NSR permitting in Idaho, the modeled impact of the source's uncontrolled potential to emit will not cause or contribute to a NAAQS violation. A requirement to conduct modeling is usually an element of the permitting process, subject to review by the permitting authority, and is not typically included as a criteria that a source must meet to qualify for an exemption from the permitting process. Because this criteria is included in an exemption determination that is made in the first instance by the source, the determination of whether a source needs a permit depends in part on the source's own analysis of whether it would cause a NAAQS violation—that is, a source that determines that it will not cause an air quality problem and which meets the other four criteria, does not need to apply for a permit to construct.

Idaho indicates that the purpose of this modeling provision is to ensure that sources which would individually have *de minimis* impacts do not in fact cause or contribute to violations when located in or near areas which are marginally attaining the NAAQS. Idaho notes that sources which meet all of the other criteria would normally qualify as *de minimis* and could be exempted completely from minor NSR without having to model compliance with NAAQS prior to being exempted.

EPA has carefully reviewed the list of categorically exempt sources and the ''below regulatory concern'' levels in sections 221, 222.01, and 222.02 and believes that these categories and levels are consistent with what has been approved elsewhere for purposes of exempting *de minimis* sources from minor NSR requirements. As a result, Idaho's requirement for self-modeling as an additional exemption criterion only further narrows exemption provisions which would be approvable even without the modeling provision. EPA proposes to approve this provision as part of Idaho's SIP. However, EPA feels that it is important to point out that this provision establishes a federally-enforceable requirement and that sources are subject to EPA enforcement or citizen suit if they fail to perform the necessary modeling and/or keep adequate records.

With respect to criteria (5), EPA is concerned with section 222.03, a provision which allows Idaho to add individual sources to the categorical insignificant list without rulemaking or SIP revision. Idaho has explained that the purpose of section 222.03 is to be able to exempt individual sources which meet criteria (1) through (4) above, but may marginally exceed the ''below regulatory concern'' levels and whose source categories were not evaluated at the time of rulemaking for inclusion on the list of categorically insignificant sources. EPA does not believe that section 222.03 is approvable. CAA section 110(a)(2)(C) and 40 CFR 51.160(a) require the State to develop legally enforceable procedures to review new and modified sources. In addition, 40 CFR 51.160(e) specifically requires the SIP to identify the types and sizes of sources which are subject to review under the State's new source review program. A provision which authorizes the State to grant additional exemptions without a SIP revision is contrary to the requirements of the CAA and its implementing regulations. Section 110(i) of the CAA specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. *See* CAA section 110(l); 40 CFR 51.104. The ''director's discretion'' provision of section 222.03 does not meet all of the requirements of section 110 of the CAA. Therefore, it is not appropriate for EPA to approve this provision into the SIP. It is important to emphasize that even if IDEQ determines to exempt a source from new source review under the authority of section 222.03, the source is not exempt from new source review as a matter of Federal law unless and until the exemption has been approved by EPA as a source-specific SIP revision.

3. Tier II Permits To Operate

The Idaho SIP currently includes a permit to operate program in Section 01.01012 PROCEDURES AND REQUIREMENTS FOR PERMITS TO CONSTRUCT AND OPERATING

PERMITS (12/31/91) which has been approved by EPA as a federally-enforceable State operating permit (FESOP) program. This permit to operate program is applicable to all stationary sources and facilities. In May 1, 1994, Idaho revised its permit to operate program to implement the title V operating permits program. In this revision, Idaho adopted two separate operating permit programs: Idaho's title V program (called ''Tier I'' operating permits) and a program which contained much of the previous permits to operate program (called ''Tier II'' operating permits). This Tier II operating permits program differs from the previous program in a number of ways. Idaho revised the applicability of the program so that some provisions do not apply to Tier I sources, made the Tier II operating permit program separate from the previously consolidated permit to construct and operating permit format, and added a requirement for Tier II permit application fees.

The Tier II operating permit program applies to sources in four circumstances. Each of these circumstances, and EPA's proposed action on them, is discussed in detail below.

Section 401.01 provides a mechanism for sources not subject to Title V operating permits to apply for an enforceable operating permit in order to:

(1) Authorize the use of an alternative emission limit (bubble) pursuant to section 440;

(2) authorize the use of an emission offset pursuant to sections 204 or 206;

(3) authorize the use of a potential to emit limitation, an emission reduction, or a netting transaction to exempt a facility or modification from permit to construct requirements;

(4) authorize the use of a potential to emit limitation to exempt a facility from Title V; or

(5) bank an emission reduction credit pursuant to section 461.

All of these are the types of actions EPA envisioned when setting forth the requirements for a SIP-approved federally-enforceable operating permit program (FESOP) (*See* 54 FR 27281, June 28, 1989) and SIP-approved generic bubble rules (*See* 51 FR 43814, December 4, 1986).[1] However, as noted below, EPA is proposing to take no action on section 440, Idaho's bubble rule. Therefore, EPA is proposing to approve section 401.01 with the exception of subsection 401.01.a, a provision which implements Idaho's bubble rule.

Section 401.02 only applies to non-Title V sources that have already received permits to construct under the SIP-approved rules. However, the Tier II rules do not include any provisions indicating what is to be included in the Tier II operating permit for such sources. EPA notes that Section 209.04 Revision of Permits to Construct states that permits to construct can only be revised using the procedures in section 209 and that a revised permit to construct must continue to comply with the requirements of sections 200 to 223. In addition, under the Clean Air Act and EPA regulations, a permit to construct is a permanent element of the SIP and cannot be superseded by an operating permit. Therefore, EPA is proposing to approve this section based on the understanding that it would be used only to establish requirements in addition to those contained in existing permits to construct and that section 404.04 (Permit Revision or Permit Renewal) cannot be used to revise terms and conditions of permits to construct. Such revisions would be done under the authority of section 209.04. This could be done through a single permit that is issued under the authority of section 400 as well as under the authority of sections 200 to 223.

Section 401.03.a. authorizes the Department to issue a Tier II operating permit to any source when emission reductions are necessary to attain or maintain any ambient air quality standard or applicable PSD increment. Although a Tier II operating permit is an appropriate State mechanism for creating new enforceable requirements, it does not alleviate the need for a source-specific SIP revision in certain situations. The Act and EPA regulations specifically require the SIP to be revised whenever a violation of the NAAQS or PSD increment is found (*See* section 110(a)(2)(H) of the Act and 40 CFR 51.166(a)(3) of EPA's regulations). Therefore, EPA is proposing to approve this section with the understanding that the emission limits and other conditions contained in Tier II operating permits issued under this section will continue to be submitted to EPA for approval when they are submitted as parts of a control strategy for a nonattainment or maintenance area or in response to a finding of violation of a NAAQS or PSD increments.

Section 401.03.b. authorizes the Department to impose specific emission standards, or requirements on operation or maintenance, on any source as necessary to ensure compliance with any applicable emission standard or rule. EPA understands that this section will be used to impose requirements in addition to those already applicable to the source and not to change any applicable requirement. The Idaho rules include section 406. OBLIGATION TO COMPLY, which states that ''Receiving a Tier II operating permit shall not relieve any owner or operator of the responsibility to comply with all applicable local, state and Federal rules and regulations.'' This is consistent with EPA's requirements for approvable FESOP programs which state that a program must ''requires(s) that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise federally enforceable'' (54 FR 27282). Based on this understanding, EPA is proposing to approve this section of the Tier II operating permit rule.

Section 401.04 authorizes the Department to issue a Tier II operating permit to any source that includes a future compliance date (*e.g.,* a compliance extension) for any provision of the Idaho rules. The section, however, conditions the issuance of such permit upon the approval of the EPA. EPA regulations specifically require that compliance date extensions be submitted to and approved by EPA as revisions to the SIP (*See* 40 CFR part 51 subpart N—Compliance Schedules and 40 CFR 51.104(b)). Since section 401.04 specifically requires the approval of EPA, and EPA's regulations require such approval to be accomplished through a SIP revision, EPA is proposing to take no action on this section. Tier II operating permits containing compliance schedules will become federally-enforceable upon EPA approval of each individual permit as a revision to the Idaho SIP.

The Tier II operating permit rules also include a section on permit applications (Section 402. APPLICATION

[1] Note that sections 204, 206, 440, 460, 461, and the definition of ''net emission increase'' authorize the Department to create new requirements directly in the Title V (Tier I) operating permit for subject sources. After EPA approval of sections 204, 206, 460, 461 and the definition of ''net emission increase'' into the Idaho SIP, terms and conditions in Title V (Tier I) operating permits that are created under the authority of these sections will be federally-enforceable. Since EPA is not proposing to approve section 440 into the SIP, terms and conditions created under the authority of that section will need to be identified in the Title V (Tier I) operating permit as state-enforceable only until such time as those terms and conditions are submitted to, and approved by, EPA as a source-specific revision to the Idaho SIP.

PROCEDURES), a requirement that the Department not issue a permit unless the source would comply with all applicable local, State or Federal emission standards, and not cause or significantly contribute to a NAAQS violation (Section 403. PERMIT REQUIREMENTS FOR TIER II SOURCES), procedures for issuing, revising and renewing permits, including the opportunity for public comment (Section 404. PROCEDURES FOR ISSUING PERMITS), requirements for permit content (Section 405. CONDITIONS FOR TIER II OPERATING PERMITS), and a provision which states that receiving a Tier II operating permit shall not relieve any source or operator of the responsibility to comply with all applicable local, state and Federal rules and regulations (Section 406. OBLIGATION TO COMPLY).

EPA has evaluated the Idaho Tier II operating permit program and has determined that, with the exceptions noted above, it continues to comply with EPA's requirements for federally-enforceable State operating permit programs as set forth in the June 28, 1989 **Federal Register** (54 FR 27281). EPA is, therefore, proposing to approve the Tier II operating permit program (including Section 007 DEFINITIONS FOR THE PURPOSES OF SECTIONS 200 THROUGH 225 AND 400 THROUGH 461; Sections 400 through 406. PROCEDURES AND REQUIREMENTS FOR TIER II OPERATING PERMIT (except that EPA is taking no action on subsection 401.01.a. and section 401.04); and Section 470. PERMIT APPLICATION FEES FOR TIER II PERMITS) into the Idaho SIP as a federally-enforceable State operating permit program. The effect of this approval will be that emission limitations and other provisions contained in Optional Tier II operating permits (except for Tier II operating permits that authorize the use of alternative emission limits (bubbles) under subsection 401.01.a or that authorize future compliance dates under section 401.04) shall be applicable requirements of the Federally-approved Idaho SIP (in addition to any other provisions) for the purposes of section 113 of the CAA and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP. Alternative emission limits and future compliance dates in Tier II operating permits will not change the otherwise applicable requirements of the Idaho SIP until such time as they are submitted to, and approved by, EPA as source-specific SIP revisions.

4. Miscellaneous Changes

There are numerous amendments to the existing rules, including renumbering and reordering the rules, and technical changes for clarification and improving the enforceability of existing emission limits. These are mainly administrative in nature to conform the existing sections to current State statutes and to other provisions of IDAPA 58. EPA finds these changes to be consistent with EPA's requirements and proposes to approve the rules as amended.

EPA is also proposing to approve the rescission of several rules, specifically Section 01.01001 POLICY; Section 01.01052.03 CRITERIA FOR DEFINING EPISODE STAGES; Section 01.01503 DESIGN STANDARDS (for incinerators); Sections 01.01551 to 01.01553 RULES FOR CONTROL OF MOTOR VEHICLES; Section 01.01996 ADMINISTRATIVE PROVISIONS; Section 01.01998 INCLUSIVE GENDER AND NUMBER; and Section 01.01999 SEVERABILITY. EPA has reviewed these changes and finds them to be unnecessary for purposes of the SIP and therefore approvable.

C. Provisions Related to Emissions Trading

EPA is proposing to take no action on certain provisions relating to the trading of emissions, specifically Section 440. REQUIREMENTS FOR ALTERNATIVE EMISSION LIMITS (BUBBLES) and Section 441. DEMONSTRATION OF AMBIENT EQUIVALENCE. The Idaho ''bubble'' rules provide authority to IDEQ to approve source-specific alternative emission limits when certain conditions are met (*e.g.,* no plant-wide increase in emissions and a demonstration of ambient equivalence). However, the Idaho rules do not require DEQ to ensure that all of the requirements of section 110 of the CAA are met (*e.g.,* visibility impairment in Class I areas) when it approves a bubble. Nor do the Idaho rules comply with the guidelines set forth in EPA's Final Emissions Trading Policy Statement (51 FR 43814, December 4, 1986) for ''generic'' bubble rules (*e.g.,* the rules do not limit generic trades to just VOC or de minimis amounts, nor do they include replicable procedures for demonstrating ambient equivalence).

SIP rules and standards are relied on to attain and maintain the NAAQS. Section 110(i) of the CAA specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. *See* CAA section 110(l); 40 CFR 51.104. As discussed above, Idaho's ''bubble'' rules do not meet all of the requirements of section 110 of the CAA. Therefore, it is not appropriate for EPA to approve sections 440 and 441 into the Idaho SIP. Moreover, there is no requirement for the SIP to include bubble rules—they are an optional element of a State program and EPA has indicated that it will approve them into the SIP only if they meet the requirements of the Final Emissions Trading Policy Statement.

It is important to emphasize that even if DEQ approves an alternative emission limit for a State air regulation, which regulation has been approved as part of the Idaho SIP, EPA is not precluded from enforcing the federally-approved SIP limit against the source. The approval of an alternative emission limit to a SIP requirement by DEQ does not change the federally-enforceable SIP requirement for that source unless and until the alterative emission limit has been approved by EPA as a source-specific SIP revision.

D. Sulfur Dioxide Control Strategy for the Eastern Idaho Intrastate Air Quality Control Region

Idaho has made numerous changes to Sections 845 through 848 RULES FOR CONTROL OF SULFUR OXIDE FROM SULFURIC ACID PLANTS. Although the numerical limits have not been changed, the rules have been revised to improve their clarity and enforceability. Specifically, where needed, source test methods and averaging periods have been specified.

EPA is proposing to approve these revisions. This proposed approval, however, does not affect or change EPA's previous disapproval of the Idaho SIP with respect to its adequacy to attain and maintain the NAAQS for sulfur dioxide in the Eastern Idaho Intrastate Air Quality Control Region (*see* 40 CFR 52.675(a)(1) and (2)), nor does it affect or change the source-specific Federal regulations at 40 CFR 52.675(b) that EPA promulgated in response to that disapproval.

E. Provisions Unrelated to the SIP

EPA is proposing to take no action on certain provisions that are not related to the criteria pollutants regulated under title I of the CAA or to the requirements for SIPs under section 110 of the Act. Specifically, EPA is proposing to take no action on the provisions related to Idaho's title V operating permit program (Section 008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 387; Sections 300 through

387. PROCEDURES AND REQUIREMENTS FOR TIER I OPERATING PERMITS; Sections 525 through 538. REGISTRATION AND REGISTRATION FEES); those provisions related to EPA regulations adopted by the State (Section 107. INCORPORATION BY REFERENCE, paragraphs 03.v. through 03.aa.), and those provisions which regulate pollutants other than criteria pollutants (Section 577.07 FLOURIDES; Section 586. TOXIC AIR POLLUTANT CARCINOGENIC INCREMENTS; Sections 750 and 751. RULES FOR CONTROL OF FLUORIDE EMISSIONS; Sections 775 and 776. RULES FOR CONTROL OF ODORS; Section 818. RECOVERY FURNACE STANDARDS; Section 819. RECOVERY FURNACE TRS STANDARDS; Section 820. DIGESTER AND EVAPORATOR STANDARDS; Section 824.01. Continuous Monitoring Requirements; Sections 835 through 839. RULES FOR CONTROL OF RENDERING PLANTS).

F. TSP and PM–10 Area Designations

In this rulemaking, EPA is also proposing to delete the total suspended particulates (TSP) area designations for Idaho in 40 CFR 81.313 and to adjust the PM–10 area designations in 40 CFR 81.313 to preserve the particulate matter minor source baseline dates as required by EPA's regulations (*see* 58 FR 31635, June 3, 1993) and section 579.01.d of the Idaho rules. In the June 3, 1993 **Federal Register**, EPA indicated that it would leave the current TSP designations in place until such time as each SIP replaced the TSP increments with PM–10 increments and ensured that any minor source baseline dates for TSP would be preserved for PM–10 areas. The Idaho rules now include PM–10 increments and provisions ensuring that any minor source baseline dates for particulate matter remain in effect.

G. Scope of Proposed Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within ''Indian Country'' as defined in 18 U.S.C. 1151.[2] Therefore, EPA proposes that this SIP approval not extend to ''Indian Country'' in Idaho. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Idaho's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.683(b). It is also consistent with EPA's approval of Idaho's title V air operating permits program. *See* 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

III. Summary of Action

EPA is soliciting public comment on its proposed approval of revisions to the State of Idaho Implementation Plan. Specifically, EPA is proposing to approve all of the amendments to the Rules for the Control of Air Pollution in Idaho as submitted by the Director of the IDEQ on May 17, 1994, May 11, 1995, November 21, 1996, February 28, 1999, December 18, 1997, April 9, 1998, May 5, 1999, December 5, 2000, and May 30, 2002, except that EPA is proposing to take no action on section 008; subsections 107.03.v. through aa; section 222.03; sections 300 through 387; sections 440 and 441; sections 525 through 538; section 577.07; section 586; sections 750 and 751; sections 775 and 776; section 818; section 819; section 820; section 824.01; and sections 835 through 839.[3] EPA approved section 204 on April 17, 2001 (66 FR 19722) and sections 563 through 574 and section 582 on April 12, 2001 (66 FR 18873).

EPA is also proposing to delete the total suspended particulates (TSP) area designations for Idaho in 40 CFR 81.313 and to adjust the PM–10 area designations in 40 CFR 81.313.

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted to the address listed in the front of this document. Written comments received by September 12, 2002 will be considered in the final rulemaking action taken by EPA.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

[2] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

[3] Sections 009, 010, 140 through 149, 161, 203.03, 210, 220.05, 221.04.a.i, 222.04.b, 225, 585, 586, 587, 590, 591, and 855 through 858 were not submitted for inclusion in the Idaho SIP. In addition, Section 710 PARTICULATE MATTER—PROCESS EQUIPMENT EMISSION LIMITATIONS ON OR AFTER JULY 1, 2000, which was submitted to EPA on December 5, 2000, was returned to the State as incomplete, so it is not before EPA to act on at this time.

Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 2, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–20449 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 262 and 403

[FRL–7255–8]

RIN 2090–AA13

National Environmental Performance Track Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Available only to members in EPA's National Environmental Performance Track program, this action proposes: a provision that would allow hazardous waste generators who are members in Performance Track up to 180 days to accumulate their hazardous waste without a RCRA permit or interim status; simplifications to reporting requirements for facilities governed by Maximum Available Control Technology (MACT) provisions of the Clean Air Act (CAA); and specific reporting modifications for Publicly Owned Treatment Works (POTWs) regulated by the Clean Water Act (CWA). Additionally, this action solicits comments on a potential pilot of consolidated reporting that would allow Performance Track facilities to submit a single report that would contain data routinely required under the CAA, the CWA, the Emergency Planning and Community Right-to-know Act (EPCRA), and the Resource Conservation and Recovery Act (RCRA). These provisions are intended to serve as incentives for facility membership in the National Environmental Performance Track, and as demonstrations of the concept for reporting streamlining.

DATES: Submit comments on or before November 12, 2002. A public hearing on this proposed rule will be held on September 27, 2002. Submit requests to present oral testimony on or before September 25, 2002.

ADDRESSES: *Comments.* Submit comments (in duplicate if possible) to: Docket No. A–2000–47, U.S. Environmental Protection Agency, Mailcode 6102, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Public Hearing will be located at 1200 Pennsylvania Avenue, Washington, DC 20460.

Electronic Access and Filing. 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–2000–47. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Documents related to this rulemaking may be viewed at: U.S. EPA Air Docket, Room M–1500, 401 M Street, SW, Washington, DC 20460 (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. Submit electronic comments and other data to *a-and-r-docket@epa.gov. See* **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Robert D. Sachs, 202–260–2765, *sachs.robert@epa.gov*. *Public Hearing information:* Robert D. Sachs, 202–260–2765, *sachs.robert@epa.gov*.

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

Docket. The docket is an organized and complete file of all the information considered by us in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. The regulatory text and other materials related to this rulemaking are available for review in the Air Docket under Docket Number A–2000–47 (*see* **ADDRESSES** above) or copies may be mailed on request by calling the Air Docket at (202) 260–7548 or by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table.

Category	Examples of NAICS
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Category	Examples of NAICS
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This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action.

Outline. The information presented in the text that follows is organized as below:

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C. What incentives for members are envisioned?
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E. Executive Order 13211, Energy Effects
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 *et. seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995

I. Overview

A. What Is the History of This Action?

EPA announced the National Environmental Performance Track (Performance Track) program on June 26, 2000. The program is designed to recognize and encourage top environmental performers—those who go beyond compliance with regulatory requirements to attain levels of environmental performance and management that provide greater benefit to people, communities, and the environment. The program is based upon the experiences of EPA, states, businesses, and community and environmental groups with new approaches that achieve high levels of environmental protection with greater efficiency. This experience includes: EPA's Common Sense Initiative, designed to improve environmental results by tailoring strategies for six industry sectors; the national Environmental Leadership Program and EPA Region I's Star Track program, designed as new ways to encourage businesses to do better than required; and many performance track-type programs in states such as Oregon, Wisconsin, New Jersey and Virginia.

EPA currently is implementing the National Environmental Performance Track (Performance Track), formerly known as the Achievement Track. The program is designed to recognize facilities that consistently meet their legal requirements, that have implemented management systems to monitor and improve performance, that have voluntarily achieved environmental improvements beyond compliance, and that publicly commit to specific environmental improvements and report on progress. A complete description of the Performance Track program, its requirements, and other program materials are available on EPA's Web site (*www.epa.gov/performancetrack*) or by calling the Performance Track Information Center toll free at 1–888–339-PTRK (7875).

EPA has held three Performance Track application periods—between July 2000 and September 2000, between February 2001 and April 2001, and between August 2001 and October 2001. In the future, EPA plans to hold two entry periods each year. A total of 279 facilities have been accepted into the program. The National Environmental Performance Track is a voluntary program. Decisions to accept and remove facilities is wholly discretionary to EPA, and applicants or potential applicants have no legal right to challenge EPA's decision.

Today's proposal creates several regulatory provisions that constitute enforceable legal requirements for facilities that are members of the Performance Track program and have taken all other necessary steps required for the applicability or implementation of the individual regulatory incentive provisions. Full eligibility and other program requirements can be found at the Performance Track Web site (*www.epa.gov/performancetrack*). The Agency believes that, because of the stringency of the program criteria, facilities in the Performance Track should receive the non-regulatory and regulatory benefits outlined in the Program Description (and summarized below). Specifically, for acceptance in the Performance Track, facilities must:

- Have adopted and implemented an environmental management system (EMS) that includes specific elements;
- Be able to demonstrate environmental achievements and commit to continued improvement in particular environmental categories;
- Engage the public and report publicly on their performance; and
- Have a record of sustained compliance with environmental requirements.

In addition, the Performance Track is designed so that EPA and other stakeholders can monitor and track the implementation of the benefits currently being offered to program members, as well as those being considered. Member facilities commit to providing annual reports on the status of their efforts to achieve their commitments to improvements in specific environmental categories. This reporting plus additional activities to engage the public result in a high level of scrutiny that will aid in monitoring the activities of the Performance Track program. Lastly, facilities are accepted into the Performance Track for a period of three years. To continue receiving the benefits associated with the program, facilities will reapply, which will include developing additional, ongoing

commitments to environmental performance improvements.

In its efforts to promote improved environmental performance through the National Environmental Performance Track, EPA is evaluating further regulatory incentives that could be applied to qualifying facilities. This rulemaking is the first in what are expected to be several steps in developing incentives that will promote participation in the program and the associated environmental benefits. These incentives will include both those that will be implemented through rulemaking (such as the regulatory changes proposed today) and those that may be accomplished through administrative action by EPA or the states. EPA encourages interested parties to submit comments on additional incentives that are consistent with the design and goals of the Performance Track.

B. How Have Stakeholders Been Involved?

During the development of the Performance Track Program and subsequent to its announcement in June 2000, EPA has had many meetings with a wide array of stakeholders. Stakeholders included companies, non-governmental organizations, states, associations, and others. Over the course of these meetings, EPA has discussed many issues including any incentives that would reward Performance Track members, as well as those incentives that would motivate non Performance Track facilities to implement environmental improvements that would qualify them for membership in the program.

This proposed rulemaking grew out of the stakeholders' collective interest in promoting incentives for participating facilities. Since the inception of the program, EPA has held three meetings with state regulators: May 2000 in Denver, February 2001 in Chicago, and November 2001 in Charleston. At each of these meetings, break-out sessions were held to solicit feedback from state personnel on potential incentives to be offered to Performance Track members.

On December 12, 2000, EPA held a ''Charter Event'' for the first round of Performance Track members. At this meeting EPA held a series of breakout discussions. During these sessions, ideas about incentives that could become part of the regulatory framework were discussed.

Similarly, on October 30, 2001 EPA met with a variety stakeholders including associations, non-governmental organizations and states to discuss EPA's ''Innovations Strategy.'' During this meeting EPA held a specific breakout session on incentives that could be made available for performance track members.

In addition, EPA has consulted regularly with individual Performance Track participants and the Performance Track Participants Association (PTPA), which is composed of 141 members. The PTPA is a nonprofit organization that provides a forum for corporations, trade associations and public entities dedicated to improving their environmental performance through the vehicle of the Performance Track program. The PTPA met twice, in June and November of 2001, and is convening its first annual conference in April, 2002. The PTPA also has an Incentives workgroup that focuses on identifying and advocating for incentives for Performance Track members.

Furthermore, EPA is working with nine trade organizations through the Performance Track network to further enhance participation in the program. Network Partners include the following organizations: American Chemistry Council, American Textile Manufacturers Institute, Cement Kiln Recycling Coalition, National Association of Chemical Distributors, National Paint and Coatings Association, National Stone, Sand and Gravel Association, NORA (an Association of Responsible Recyclers), North American Die Casting Association, and Screenprinting and Graphic Imaging Association International.

C. What Incentives for Members Are Envisioned?

The Performance Track Program Description provides a list of incentives the Agency intended to make available to member facilities. EPA currently offers several incentives that are available to members when they enter the program (*e.g.,* recognition, networking opportunities, discretionary inspection benefits). EPA is also in the process of making other incentives available through taking administrative action (other than rulemaking) and by issuing or amending guidance documents (*e.g.,* reduced reporting under Discharge Monitoring Reports). These incentives will be available when those steps have been completed. In some cases, other steps also must be taken before a facility may take advantage of an incentive. For example, states are responsible for implementing parts of many federal environmental programs. In such cases, states may need to revise regulations, seek EPA approval of a revised program, re-issue permits, or take other actions. EPA has made funds available to approximately 20 states to identify where existing state laws may need to be revised to support the National Environmental Performance Track. See the National Environmental Performance Track Program Description for a fuller discussion of these incentives.

In the Program Description, EPA also committed to propose specific regulatory changes as incentives for membership in the Performance Track. The proposed changes in this rulemaking follow up on this commitment. EPA believes the modest regulatory changes proposed here are appropriate for facilities that are members of the program.

EPA is proposing the following regulatory changes to promote membership in the program and to realize the environmental and other benefits resulting from the actions of member facilities. EPA excluded incentives that would involve a relaxation of substantive standards of performance or that would require statutory change. EPA identified incentives that would apply broadly to different types of facilities; that reduce the reporting and other operating costs of the current system; and that can be implemented nationally.

EPA believes it is important to offer the kinds of incentives described here for several reasons. First, the achievements of these facilities deserve public recognition. Second, some of the reporting and other administrative requirements that apply generally to facilities may not be needed for facilities that have met the entry criteria for the Performance Track because these facilities have implemented appropriate environmental management systems, have consistently met their regulatory commitments, and have agreed to make information regarding their performance publicly available. Third, these incentives may offer the opportunity for qualifying facilities to apply their resources to achieving even better environmental performance. And finally, the availability of these incentives should encourage other facilities to make environmental improvements that will enable them to qualify for membership.

In this rulemaking, EPA is proposing changes to certain regulatory programs to offer incentives exclusively to Performance Track facilities. They include:

- Reducing the frequency of reports required under the air toxics provisions of Section 112 of the Clean Air Act (air toxics standards promulgated under this section of the CAA are often referred to

as MACT Standards or Maximum Achievable Control Technology Standards). In this incentive, EPA proposes to reduce the frequency of required MACT reporting for all eligible Performance Track facilities to an interval that is twice the length of the regular reporting period, but not less frequently than once every six months. Second, if Performance Track facilities reduce their emissions through pollution prevention or process changes to below MACT levels, and below the major source threshold, required reporting elements in the periodic report may be met through an annual certification. Performance Track facilities must continue to meet all relevant monitoring and recordkeeping requirements. For major sources, reports must still be submitted at least semi-annually in order to meet Title V permitting requirements.

• Reducing the reporting costs for POTWs in the Performance Track that must publish notices of violations by facilities that use their services. These POTWs would be allowed to use the Internet rather than paid newspaper notices. POTWs would also be allowed to reduce their oversight of some smaller industrial users; they would be allowed the discretion to determine that some of these users are ''nonsignificant.'' Also proposed are other alternative environmental performance-based incentives for POTWs in the Performance Track.

• Allowing large quantity hazardous waste generators who are members of the Performance Track up to 180 days (and 270 days if the waste must be transported 200 miles or more) to accumulate hazardous waste without a RCRA permit or interim status, provided that these generators meet certain conditions. This incentive would also assist EPA in learning more about appropriate hazardous waste generator accumulation times.

In this notice, EPA solicits comments on another potential incentive—the opportunity for Performance Track facilities to consolidate reporting under various environmental statutes into a single report. The incentives in this notice—both those for which we propose rulemaking changes and the opportunity for participating in a consolidated reporting pilot—are just a part of an overall package of incentives that EPA intends to provide for Performance Track members. We noted above that the National Environmental Performance Track Program Description lists several other incentives that EPA intends to make available through administrative action not requiring rulemaking changes. That same document notes that EPA is considering another potential incentive—the opportunity for expedited review for companies that submit Premanufacturing Notifications (PMNs) under the Toxic Substances Control Act, if the substance is manufactured in a Performance Track facility and the applicant uses EPA's Pollution Prevention Framework in preparing the PMN submission. If EPA decides to make the TSCA incentive a part of the Performance Track Program, we would propose rulemaking to do so at a later time.

We solicit comments on whether EPA should add other incentives beyond the ones in this notice and in the Program Description, and what they might be. EPA will consider at least three criteria in devising and selecting additional incentives. One is the make-up of the current set of Performance Track facilities and the potential applicant pool. Another is the extent to which the characteristics of Performance Track facilities (including their use of effective EMSs and their commitment to public reporting beyond that required by regulations) may be appropriate substitutes for some aspects of existing regulatory and other requirements. The third criterion is that incentives do not represent a reduction in protectiveness when compared to current requirements. We solicit comments on these criteria and suggestions of others.

D. What Is EPA's Rationale for This Rule?

EPA is proposing to modify reporting and other requirements that affect facilities that are subject to various environmental statutes and regulations. The proposed rulemaking would make these modifications available only to those facilities that successfully achieve the status of members in the National Environmental Performance Track Program and continue to meet the conditions of the program.

The environmental benefits that will be generated by Performance Track member facilities are related to the criteria for membership in the Performance Track. These were enumerated and fully described in EPA's announcement of this program (*www.epa.gov/performancetrack*), and are summarized below:

Facilities must satisfy the following four entry criteria to be accepted into the Performance Track:

(1) Facilities must be in compliance with Federal, State, Local and Tribal environmental regulations.

(2) They must operate a well-designed environmental management system (EMS) as part of their overall management system.

(3) They must demonstrate a record of environmental improvements for the previous two years beyond the minimums required of them. They also must take additional future actions and commit to further improvements in the succeeding three years.

(4) Facilities must engage the public and each year they must report publicly on their progress toward meeting the goals that they have chosen, as well as summarize their compliance and the performance of their EMS. EPA will also make the applications of each facility member available to the public.

These criteria are the key to generating the incremental environmental improvements; they were designed to work together as an integrated approach. No single criterion, standing alone, would provide EPA with the necessary assurance that the changes proposed here would lead to increased compliance or performance. However, in combination the Agency believes that these criteria ensure that the facilities eligible for these proposed changes are both capable of and committed to maintaining beyond-compliance environmental performance and that any lapses will be rare and quickly corrected by facility management. Further, the Agency and the public will continue to receive information on facility compliance and performance. Nothing in this proposal would compromise the ability of the Agency to investigate and sanction suspected environmental violations.

Compliance with environmental regulations: Although the first criterion merely re-iterates the existing obligation of all facilities to comply with relevant policies and regulations, the other criteria go beyond the environmental problems addressed under existing regulations and focus on the unique set of environmental challenges faced by each individual facility. EPA believes that a strong compliance history is an important factor in defining performance in the Performance Track. EPA, in cooperation with State and local authorities to the extent possible, reviews the compliance history of applicants.

Environmental management systems: To satisfy the second program criterion, a Performance Track member facility must have a mature environmental management system. These systems integrate environmental considerations into routine decision-making at facilities, establish work practices that consistently reduce environmental risks and releases, evaluate environmental performance, and set management

priorities based on the environmental impacts of individual facilities. Because they organize and consolidate information on a facility's environmental obligations and potential weaknesses for management, an EMS often improves the facility's compliance record and reduces accidents. However, many EMS frameworks address unregulated environmental impacts as well as regulated impacts. Thus, an EMS provides a facility with the ability to assess and mitigate impacts that are most significant for the facility or that pose the most risk to the ecosystem and community surrounding the facility. An EMS allows a facility to take additional environmental mitigation actions that are highly effective and appropriate, providing better environmental results as well as more flexibility than the existing regulatory structure alone.

EMSs are being used increasingly by organizations around the world to help integrate environmental considerations into day-to-day decisions and practices and to address environmental issues more consistently and effectively. The increasing use of EMSs has resulted in the development of an international EMS standard (ISO 14001). In light of their growing use and potential for improving environmental results, especially in the area of unregulated impacts, EPA has focused more attention on EMSs in recent years. The Agency has a research program underway with the States to pilot test and evaluate the effectiveness of EMSs in several industry settings. The Agency has developed and tested EMSs for specific sectors, including local governments and metal finishing and screen printing firms. We have promoted EMSs through several voluntary partnership programs, such as Design for the Environment (DfE), and we have incorporated EMS requirements in enforcement settlement agreements. In June 2000, the Administrator supported the North American Commission for Environmental Cooperation (CEC) document ''Improving Environmental Compliance: 10 Elements of Effective Environmental Management Systems.''

The EMS provisions in the Performance Track are designed to ensure that member facilities will continue to not only meet their regulatory obligations but also to perform better than required by regulation. The Performance Track specifies that a qualifying facility must have an EMS that includes detailed elements in the following categories: environmental policy (including compliance with both legal requirements and voluntary commitments), planning, implementation and operation, checking and corrective action, and management review. Additionally, the EMS must have been in full operation for at least one review cycle (generally one year) and must have been audited (may be a self-audit). The EMS requirements are described in more detail in EPA's National Environmental Performance Track Program description at *www.epa.gov/performancetrack.*

Past and future environmental improvements: Facilities must demonstrate their commitment to continuous environmental performance. To do this, facilities must identify accomplishments in specific categories. The categories are: energy use, water use, materials use, air emissions (including greenhouse gases), waste, discharges to water, accidental releases, habitat preservation/restoration, and product performance. Past improvements must have been beyond regulatory requirements. In addition, Performance Track facilities must make use of their EMSs to set and commit to achieving environmental performance goals that go beyond regulatory requirements and that mitigate some facility-selected significant environmental impacts. These performance goals must be chosen among the specific categories identified above including both regulated and unregulated environmental impacts.

Because these performance goals and accomplishments go beyond requirements and in some cases, well beyond areas covered by existing environmental regulations, EPA believes that facilities that qualify for the Performance Track have demonstrated a serious commitment to real environmental improvement. By their willingness to undertake greater environmental responsibilities, these facilities have earned the confidence that they will maintain compliance with regulatory requirements under the streamlined procedures proposed in this Notice.

Public commitments: To satisfy the fourth program criterion, all Performance Track facilities publicly disclose progress toward their commitments and other performance information each year, including summary information regarding their EMS and compliance with legal requirements. Because these commitments and the performance reporting go beyond those required by current regulation, communities will have access to more information about the performance of local facilities. This public scrutiny also will provide an incentive for firms to make meaningful commitments and achieve them.

We believe that facilities that make the choice to apply and to demonstrate their commitments to environmental improvements in the public spotlight will be imposing upon themselves a unique and particularly strong set of pressures to deliver this heightened level of performance.

In time, we expect the Performance Track program to produce additional environmental gains as a result of the more efficient use of the resources of federal, state, and local environmental authorities. Because we expect the entry criteria to result in member facilities that are carrying out their environmental obligations in a manner beyond what is required of them, we believe that EPA and the other authorities will be able to shift enforcement and compliance activities to other facilities in the regulated community. We believe that this resource reallocation may bring further environmental improvements, as limited compliance resources are applied more effectively.

Each of the regulatory changes we are proposing today would enable some Performance Track members to reduce their reporting or other compliance costs.

1. What Environmental Benefits Will the Performance Track Program Bring to Society?

EPA believes that its refocus of resources may lead to additional environmental compliance. Public recognition and reporting requirement relief, to the extent that they affect companies bottom lines, may influence company decisions to undertake regulatory projects that go beyond regulatory requirements. The public will be able to judge the nature and magnitude of these environmental benefits by examining the annual reports that Performance Track facilities are required to prepare and make public.

2. How Will Incentives Maximize the Benefits of the Performance Track Program?

Incentives play a crucial role in maximizing the environmental benefits of any voluntary program. Facilities must perceive a benefit to themselves that is at least equal to their perceived costs of membership in a voluntary program. These costs include the administrative burden of membership as well as any costs incurred in meeting the substantive requirements of the program. Facility members of the Performance Track Program also face

the additional risk of adverse public reaction if they fail to meet their environmental goals or if their internal audits of compliance or EMS performance reveal problems. These public risks are unique to Performance Track facilities. Facilities participating in other EPA voluntary programs as well as facilities that do not participate in any voluntary program may and do keep audit information confidential. Improved public information about the environmental performance of facilities is an important component and public benefit of the Performance Track program and it significantly raises the costs perceived by facility managers for internal oversights or lapses.

The greater the benefits to facility members in the Performance Track program, the more facilities will participate. Increased program incentives may also generate environmental benefits from non-members. If facilities that do not currently meet the Performance Track program criteria believe that membership would benefit them, they may work to improve their management systems and environmental performance to become eligible.

3. Will These Incentives Undercut Existing Environmental Protections?

EPA believes that the proposed 180-day accumulation period for hazardous waste and the changes proposed in reporting for MACT facilities and for POTWs will have no direct deleterious effects on the environmental performance of those facilities. We believe that, although EPA and other regulatory bodies will receive compliance information from these facilities less frequently, the facilities' demonstrated strong environmental performance and the presence of their EMSs more than compensate for reduced reporting. As a safeguard, EPA and the other governmental authorities will not be giving up their ability to take enforcement actions against any facility that fails to comply with permits or other obligations. The risk of a very public removal from this program for failure to comply adds an extra incentive to comply with program requirements. EPA believes that this, plus the incentives that facilities have to be perceived by the public and by governmental offices as better environment performers than their competitors, reduces the risk that any environmental damages will result from this program or the regulatory changes we are proposing.

We believe that the changes proposed here for POTWs' public reporting will not decrease the public's ability to learn about violations by the POTWs' permittees. Rather, EPA believes that these changes may actually enhance the public's ability to learn about these violations and thus to participate in ensuring compliance by dischargers.

4. How Does the Program Design Limit Membership to a Uniquely Appropriate Set of Facilities?

EPA designed the Performance Track program to generate improvements in environmental performance of facilities. EPA believes that the entry criteria and the ongoing obligations for continued membership in Performance Track as described above will bring about benefits to the environment such as decreased releases of pollutants to the air, water, and land, of greater efficiency in energy and raw material usage, and of decreased risks of accidental releases of hazardous substances. These incremental environmental benefits will flow from the facilities' activities that are tied to their membership in Performance Track, and this justifies making available to this category of facilities the benefits of the modified requirements that we propose today.

Further, EPA believes that there are controls and safeguards built into the Performance Track program that reduce the possibility a facility would receive the benefits of the modified requirements we propose today without the facility delivering improved environmental performance.

EPA's announcement of this program (*www.epa.gov/performancetrack*) describes how we review the applications and make selections of facilities that meet the entry criteria. It also summarizes other steps we will take to run the program, including conducting site visits at up to 20 percent of the member facilities and the possible removal of facilities if they are found not to be meeting the commitments they have taken on. We believe that this approach is generally capable of identifying those facilities, among the tens of thousands of facilities subject to environmental regulations, which have and will continue to comply with and exceed regulatory requirements. We also believe that the combination of the administrative controls of the Performance Track program and the public reporting voluntarily accepted by program members will, as a rule, be effective in limiting membership to only such facilities.

II. The Proposed Rulemaking Changes

A. Maximum Achievable Control Technology (MACT)

1. Reduced Frequency of Required MACT Reporting for All Eligible Performance Track Facilities

Facilities covered by the MACT provisions of the Clean Air Act must meet a variety of recordkeeping, monitoring, and reporting requirements as specified in 40 CFR part 63—National Emission Standards for Hazardous Air Pollutants for Source Categories. For facility members in the Performance Track, EPA proposes to reduce the reporting frequency while assuring the availability of information required for compliance with MACT standards.

Because of the high-level environmental performance of Performance Track facilities, EPA believes it is appropriate to provide these facilities the opportunity to reduce their reporting frequency under part 63. Since the underlying data required from these facilities would still be gathered, the Agency would still receive the information needed to ascertain any lapses in compliance.

MACT reporting requirements differentiate between facilities, based on facility performance, with respect to reporting frequency. For example, reporting frequency may be increased from semi-annually to quarterly for some reports based on the frequency of excursions outside of required performance parameters. The approach the Agency is proposing today applies a similar concept by reducing reporting frequency for the best performers.

EPA is proposing to reduce the frequency of certain required periodic MACT reports for eligible Performance Track facilities. Periodic reports include a range of reports that are required to be sent in to the Permit Authority on intervals that range from quarterly, or more frequently if required by special circumstances, to semi-annually. The reports are different from records, which must be kept on site and incorporated into the periodic reports and other reports. There are general reporting requirements in 40 CFR part 63, subpart A, and additional reporting requirements under subparts applying to specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants.

EPA is proposing to double the reporting intervals for these reports by amending §§ 63.2 and 63.10, and adding a new § 63.16. For major sources, however, reports must still be submitted at least semi-annually to meet Title V

permitting requirements specified in section 504(a) of the Clean Air Act.

This proposed rulemaking would not revise other requirements concerning event reporting, record keeping, and monitoring. EPA is seeking comment, however, on whether there are also opportunities to reduce these burdens for Performance Track facilities while still providing the information required to assure protection of health and the environment.

2. Reporting Reductions for Performance Track Facilities That Achieve MACT or Better Emission Levels Through Pollution Prevention Methods Such as Process Changes

EPA is also proposing to reduce the level of detail of the required reporting, under some circumstances, for those facilities which reduce emissions below 25 tons per year of aggregate hazardous air pollutant (HAP) emissions and 10 tons per year of any individual HAP, and which have reduced emissions to a level which is fully in compliance with the applicable MACT standard.

For those Performance Track facilities which are below the thresholds for major sources of HAPs (25 tons per year aggregate or 10 tons per year for an individual HAP), and which have reduced the levels of all HAP emissions to at least the level required by full compliance with the applicable standard, additional reductions in reporting requirements would be available, depending on the nature of the requirement and the means the facility is using to meet the requirement. As above, however, for major sources, reports would still be submitted at least semi-annually to meet Title V permitting requirements.

Once again, the objective is to reduce the reporting burden for the best performing facilities, without compromising the Agency's ability to ensure compliance.

For those facilities using pollution prevention technologies or techniques to meet MACT standards, reductions in reporting burden would depend on the requirements of the Part 63 standard and facility performance. The term ''source reduction'' is defined in the Pollution Prevention Act (PPA) section 6603. Members in this program should refer to this statutory definition and any subsequent rulemakings and interpretations pursuant to PPA section 6607. The specific incentives are listed below:

(1) If the standard calls for control technology and the facility complies using control technology: The facility can substitute a simplified annual report, to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use the control technology to meet the emission standard, and are running it properly. The facility would still have all monitoring and recordkeeping requirements.

(2) If the standard calls for control technology and the facility complies using pollution prevention (P2):

The facility can substitute a simplified annual report, to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use P2 to reduce HAP emissions to levels at or below the MACT standard requirements. The facility would have to maintain records demonstrating the veracity of the certification.

(3) If the standard calls for pollution prevention and the facility complies using pollution prevention:

There is no reduction in the requirements unless the facility is achieving performance 50% better than the standard. If the facility is achieving that level of performance or better, then the facility can substitute a simplified annual report, to meet all required reporting elements in the applicable part 63 periodic report, certifying that they are continuing to use P2 to reduce HAP emissions to levels below the MACT standard. The facility would have to maintain records demonstrating the veracity of the certification.

For each of the above alternatives, EPA is proposing that if the facility no longer meets the criteria for continued membership in the program, the incentive would no longer apply. In addition, the facility may be removed from the program.

EPA solicits comments on the proposed changes described above.

B. Alternative Environmental Performance-Based Incentives for POTWs in the Performance Track

Publicly Owned Treatment Works (POTWs) regulated under the National Pretreatment Program (General Pretreatment Regulations for Existing and New Sources of Pollution) are required to identify industrial users discharging to their systems, issue permits to these users, monitor industrial user activities through on-site sampling and inspections, and carry out other administrative functions involving extensive recordkeeping and reporting.

In order to become a member in the National Environmental Performance Track program, a POTW must demonstrate a historical record of meeting legal requirements associated with its operation, implement an Environmental Management System, and achieve environmental improvements that go beyond compliance with their basic NPDES permit conditions. For those POTWs, EPA has concluded that it is reasonable to provide administrative relief from certain requirements. EPA considers that the proposed reporting and other programmatic and administrative changes proposed today are particularly appropriate for Performance Track POTWs. Such facilities, because of their EMSs and their commitment to continued environmental improvements, can implement these changes with less risk of adverse environmental effect.

1. Electronic Web posting for SNC notification.

a. What Are the Existing Requirements?

POTWs are currently required to publish a list of industrial users which, at any time during the preceding 12 months, were in significant noncompliance. ''Significant Noncompliance'' (SNC) is defined in 40 CFR 403.8(f)(2)(vii) to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of discharge limits (where 66 percent of all measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter); (2) technical review criteria (TRC) violations (where 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for Biological Oxygen Demand (BOD), Total Suspended Solids (TSS), fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the Control Authority's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report noncompliance; and (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or

implementation of the local Pretreatment Program.

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of that modification was to provide some certainty and consistency among Control Authorities for publishing their lists of Industrial Users in noncompliance. Currently, Control Authorities are required to annually publish a list of Industrial Users (IUs) in SNC at any time during the previous twelve months. The Control Authority must publish this list in the largest daily newspaper published in the municipality in which the POTW is located. Independent of this publication requirement, Control Authorities are required to develop and implement Enforcement Response Plans, which describe the range of enforcement responses they will use in addressing various types of IU Noncompliance. Where an IU is identified as being in SNC, EPA guidance recommends that the Control Authority respond with some type of formal enforcement action such as an enforceable order (''Guidance for Developing Control Authority Enforcement Response Plans,'' EPA 832–B–89–102, September 1989.)

b. What Is in Today's Proposal?

Under today's proposed rule, a Performance Track POTW would have the discretion to not publish certain instances of SNC in a newspaper. The POTW would be allowed, in lieu of a newspaper publication, to provide information on all instances of SNC on its Web site for a designated 30-day period. EPA believes that this change would provide faster public notice of SNC and would reserve additional newspaper publication of SNC for cases where this format is needed for its potentially greater effect. Importantly, the Performance Track POTW would continue to be required to provide newspaper publication of any violation which is not corrected within thirty (30) calendar days, or which results in pass through or interference. This would ensure that members of the community without access to a computer would still have notice of a subset of the significant and/or ongoing violations. The POTW must keep historic compliance data for each Industrial User in SNC as part of its web page beginning with the first web publication. Historic compliance data must be easy to access and well documented as part of the web page and must be continual. The POTW must certify as part of its annual report that it has posted the significant noncompliance information and historic compliance data on the web site. Furthermore, a hard copy of the web page listing the significant noncompliance data must be sent to the Approval Authority as part of the annual report and must be made available to EPA, State, and the public upon request. All SNC violations, whether published in a newspaper or not would be published as soon as is practicable or annually on a schedule determined by the Control Authority's permit on the Control Authority Web site. The Web site must contain an explanation of how SNC is determined, as well as a contact name and phone number for additional information. The SNC information will be added to the historic compliance data at the end of the 30 day notice period.

The purpose of the current provision is to comply with the public participation requirements of 40 CFR part 25, while also serving as a deterrent to violators because of the public notification of noncompliance. Allowing POTWs to report such violators on their Web sites would reduce the printing costs incurred by municipalities to publish the list, while potentially providing increased public visibility and access to the information. Typically, newspaper notices are published once per week for two succeeding weeks; the Web site would include the information every day for at least 30 days. The Internet provides an entirely new mechanism for access to information, and provides for the information to be available on a longer-term basis than in a single edition of a newspaper. Moreover, posting on the POTW's Web site is likely to provide better and more focused access for members of the public particularly interested in the activities of the POTW. Given the wide availability of access to electronic information at public facilities, such as libraries, this information may be, in fact, more readily available to all members of the public than that obtained through newspaper publication. It is also likely that local newspapers would utilize this information in their reporting on environmental issues.

The Agency solicits comment on whether it is necessary to require public notice of a subset of SNC, or for ongoing instances of SNC to be published in a newspaper. In particular, the Agency seeks comment on how it might dispense with newspaper publication of SNC in its entirety for Performance Track POTWs while still providing equal and permanent access to this important information to all members of the community, regardless of socioeconomic status, race, or physical ability. How would a substitution affect the availability of this information to the public? Is the publication of this information on the internet an adequate substitute for newspaper publication? Is a 30-day listing, followed by availability of a historic listing of all listed SNC violations on the Control Authority's Web site an adequate substitute for the current practice? What are the cost and other resource implications for the POTWs of taking advantage of this alternative approach? Is access to the Internet readily available in all communities, through the use of personal computers, libraries and schools? What would be adequate notice of this kind of a change in the public notice procedures?

2. Oversight of Significant Industrial Users

a. What Are the Existing Requirements?

Why does it matter which industrial users are considered significant?

POTWs with Approved Pretreatment Programs and States acting as Pretreatment Control Authorities are required to provide certain minimum oversight of Significant Industrial Users (SIUs). The required minimum oversight includes inspection and sampling of each SIU annually, reviewing the need for a slug control plan every two years, and issuing a permit or equivalent control mechanism every five years (40 CFR 403.8(f)(1)(iii) and (f)(2)(v) and 403.10(f)(2)(i)).

Control Authorities have expressed concern with the rigidity of the oversight requirements, especially with respect to smaller facilities that are subject to categorical Pretreatment Standards and facilities that have no potential to cause pass through or interference problems at their plants. If these facilities were excluded from the definition of SIU, Control Authorities could, on a case-by-case basis, determine adequate sampling and inspection frequencies and whether individual permits are necessary for the facilities.

What facilities are currently defined as Significant Industrial Users?

''Significant Industrial User'' is defined in 40 CFR 403.3(t) to include two types of facilities. The first includes all industrial users that are subject to a Pretreatment Standard for New or Existing Sources. These standards are often referred to as national categorical pretreatment standards and facilities subject to the standards are referred to as categorical industrial users (CIUs).

The second category of facilities included in the definition of SIU includes those which are not categorical

industrial users. All non-categorical facilities that discharge over 25,000 gallons per day of process wastewater are considered SIUs unless a Control Authority excludes a facility based upon a finding that it does not have a reasonable potential of adversely affecting the operation of the plant or of causing a violation of any pretreatment standard or requirement. Control Authorities may also consider smaller facilities to be SIUs if the facilities have the potential to cause problems with a POTW's operations or violate pretreatment standards or requirements.

What is the history of the definition of SIU?

The definition of SIU and related requirements was established in July 1990 by the rule to implement the Domestic Sewage Study (''the DSS Rule''). 55 FR 30082, July 24, 1990. Before this regulatory revision, sampling and inspection frequency were only recommended in EPA guidance. *Pretreatment Compliance Monitoring and Enforcement Guidance* (1986). The proposed DSS Rule would have required Control Authorities to inspect and sample SIUs at least once every two years. The DSS proposal requested comment on whether to require annual inspections and sampling. 53 FR 47649, November 23, 1988. The preambles to the proposed and final rule did not specifically address whether to adopt a different requirement for oversight of smaller SIUs.

The proposed Metal Products and Machinery rule (60 FR 28269, May 21, 1995) solicited comment on whether, as an alternative to exempting low discharge industrial users from the rule, EPA should revise part 403 to reduce monitoring, reporting and inspection requirements applicable to small-flow facilities. Today's proposal elaborates on the issue of categorical industrial users that may be considered nonsignificant.

What changes to the definition of Significant Industrial User has EPA considered in the past?

In 1996, the Water Environment Federation (WEF) and the Association of Metropolitan Sewerage Authorities (AMSA) convened a workshop to discuss potential opportunities to streamline the pretreatment regulations. One of the recommendations from the Pretreatment Streamlining Workshop was to exclude facilities under 100 Gallons Per Day (GPD) from the definition of Significant Industrial User. The Workshop also presented recommendations for additional streamlining. One of the Workshop's recommendations was that Control Authorities be able to exempt from the definition of SIU any categorical industrial user that has no reasonable potential to adversely affect the POTW's operation.

The Workshop also recommended that EPA allow Control Authorities more flexibility in the oversight of facilities that would continue to be defined as SIUs. Specifically, the Workshop recommended that EPA allow Control Authorities more flexibility in sampling SIUs, while perhaps keeping the annual inspection requirement.

In 1997, EPA sent a letter to stakeholders that solicited comment on revising the current definition of Significant Industrial User to exclude certain ''*de minimis*'' (now referred to as ''nonsignificant'') facilities that are subject to national categorical pretreatment standards. The draft suggested a definition of nonsignificant that included (1) facilities that never discharge concentrated wastes such as solvents, spent plating baths, filter backwash, and sludges, or more than 100 GPD of other process wastewater, and (2) facilities subject only to certification requirements after having met Baseline Monitoring Report requirements (*e.g.,* pharmaceutical manufacturers). EPA's letter sought comment on the recommendations from the WEF/AMSA Workshop and also on whether to allow POTWs more flexibility in sampling SIUs that had been in consistent compliance.

In 1999, EPA proposed changes to the Pretreatment regulations in the **Federal Register**. Included in the proposed changes is a new definition for Significant Industrial User.

Did the stakeholders agree with EPA's suggestion?

Most of the commenters in the 1999 proposal supported the concept of allowing POTWs to reduce some oversight of nonsignificant categorical industrial users. However, no clear consensus exists for what the definition of nonsignificant should be.

Several commenters thought that the definition of SIU should not be changed. Some commenters opposed a definition based on flow and preferred one based on total mass or on potential to impact the POTW. One made a specific recommendation that SIU status be determined by considering both the flow and its toxicity using the Toxic Weighting Factors used by EPA in guideline development.

A few commenters addressed whether facilities that are in consistent compliance should be allowed to be excluded from oversight as SIUs. One commented that, regardless of consistent compliance, any SIU with the potential to adversely impact the POTW should be an SIU. Approval Authority commenters generally opposed and POTW commenters generally supported not requiring Control Authorities to regulate as an SIU any industrial user that did not present a potential to adversely impact the facility.

b. What Is in Today's Proposal?

What changes to the SIU definition is EPA proposing today?

EPA is proposing to authorize Control Authorities that have been approved as National Environmental Performance Track facilities to designate certain categorical industrial users as ''nonsignificant.'' Today's proposal would keep the existing definition of significant industrial user, but allow Control Authorities to exempt certain Categorical Industrial Users (CIUs) from the definition if the appropriate Control Authority determines the CIU is ''nonsignificant.'' In making the determination that a CIU is ''nonsignificant,'' the Control Authority will be required to consider the potential for the CIU to violate any pretreatment standard and the potential impact of the facility on the POTW, alone and in combination with other discharges. The Control Authority will be required to document the decision and demonstrate the CIU has no reasonable potential to adversely impact the POTW and no reasonable potential to violate any applicable Pretreatment Standard established by EPA, the State, or the local Control Authority. Additionally, the CIU must have been in compliance for 3 years preceding the determination.

Regardless of whether they are considered SIUs, all CIUs would still be required to comply with applicable categorical pretreatment standards and the related reporting requirements in 40 CFR 403.12. Control Authorities would still be required to perform the same oversight of ''nonsignificant'' CIUs that is required for other facilities that are not SIUs, including notifying the CIU of its status and requirements (§ 403.8(f)(2)(iii)); receiving and reviewing required reports (§ 403.8(f)(2)(iv) and § 403.12(b), (d), and (e)); random sampling and inspection (§ 403.8(f)(2)(v)) and taking enforcement action as necessary (§ 403.8(f)(2)(vi)).

The POTW's annual Performance Track report to EPA would provide a list of the facilities that are being regulated as nonsignificant CIUs. After an initial list is provided, deletions and additions may be keyed to the previously submitted list.

Will EPA consider other criteria for designating a CIU as ''nonsignificant''?

Yes. Various stakeholders in the past have suggested different flow cut-off criteria for ''nonsignificant'' CIUs. EPA recognizes that any numeric flow cut off is likely to be somewhat arbitrary. For instance, the 100 GPD criterion was supported by the stakeholders at the WEF/AMSA meeting, and EPA included this criterion in its 1999 proposal. EPA is interested in other ideas specific to Performance Track facilities, and therefore, is requesting comment on other criteria.

3. Program Modifications

a. What Are the Existing Requirements?

What are the current requirements addressing Program Modifications?

40 CFR 403.18 States, in part;

(a) General. Either the Approval Authority or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW's submission, as approved under § 403.11.

(b) Substantial modifications defined. Substantial modifications include:

(1) Modifications that relax POTW legal authorities (as described in § 403.8(f)(1)), except for modifications that directly reflect a revision to this Part 403 or to 40 CFR chapter I, subchapter N, and are reported pursuant to paragraph (d) of this section;

(2) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to paragraph (d) of this section. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users identified by the POTW) may discharge pursuant to limits developed under § 403.5(c);

(3) Changes to the POTW's control mechanism, as described in § 403.8(f)(1)(iii);

(4) A decrease in the frequency of self-monitoring or reporting required of industrial users;

(5) A decrease in the frequency of industrial user inspections or sampling by the POTW;

(6) Changes to the POTW's confidentiality procedures; and

(7) Other modifications designated as substantial modifications by the Approval Authority on the basis that the modification could have a significant impact on the operation of the POTW's Pretreatment Program; could result in an increase in pollutant loadings at the POTW; or could result in less stringent requirements being imposed on Industrial Users of the POTW.

(c) Approval procedures for substantial modifications.

(1) The POTW shall submit to the Approval Authority a statement of the basis for the desired program modification, a modified program description (*see* § 403.9(b)), or such other documents the Approval Authority determines to be necessary under the circumstances.

(2) The Approval Authority shall approve or disapprove the modification based on the requirements of § 403.8(f) and using the procedures in § 403.11(b) through (f), except as provided in paragraphs (c)(3) and (4) of this section. The modification shall become effective upon approval by the Approval Authority.

(3) The Approval Authority need not publish a notice of decision under § 403.11(e) provided: The notice of request for approval under § 403.11(b)(1) states that the request will be approved if no comments are received by a date specified in the notice; no substantive comments are received; and the request is approved without change

(4) Notices required by § 403.11 may be performed by the POTW provided that the Approval Authority finds that the POTW notice otherwise satisfies the requirements of § 403.11.

(d) Approval procedures for non-substantial modifications.

(1) The POTW shall notify the Approval Authority of any non-substantial modification at least 45 days prior to implementation by the POTW, in a statement similar to that provided for in paragraph (c)(1) of this section.

(2) Within 45 days after the submission of the POTW's statement, the Approval Authority shall notify the POTW of its decision to approve or disapprove the non-substantial modification.

(3) If the Approval Authority does not notify the POTW within 45 days of its decision to approve or deny the modification, or to treat the modification as substantial under paragraph (b)(7) of this section, the POTW may implement the modification.

(e) Incorporation in permit. All modifications shall be incorporated into the POTW's NPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 40 CFR 122.63(g).

Many of these requirements are a result of the revisions to the Program Modification regulations made in 1997. The 1997 revision streamlined the procedures for modifying approved POTW Pretreatment Programs in several ways. First, fewer categories of modifications are considered ''substantial'' and, therefore, automatically subject to the detailed public notice procedures. Modifications that will no longer automatically be considered ''substantial'' include: changes that result in more prescriptive POTW legal authority; changes to legal authority that reflect changes to the Federal regulations; changes to local limits for pH; reallocations of local limits that do not increase the authorized discharge of the pollutant from the POTW; and other changes discussed below. 40 CFR 403.18(b). Second, the rule no longer requires the Approval Authority to issue a public notice of its final approval of a modification if it received no comments on its proposed approval of the modification and the modification is approved as proposed. 403.18(c)(3). Third, public notice provided by a POTW will satisfy the Approval Authority's obligation to provide notice in certain circumstances. 40 CFR 403.18(c)(4). Fourth, the rule allows a POTW to report changes to its list of industrial users in the POTW's annual reports, rather than being required to obtain advance approval. 40 CFR 403.8(f)(6) and 403.12(i)(1). Fifth, the period of notice that POTWs must provide for non-substantial modifications and the time for review by Approval Authorities will both be 45 days; POTWs may implement a non-substantial modification if the Approval Authority does not disapprove it within that time. 40 CFR 403.18(d). Sixth, the rule grants additional flexibility regarding the type of newspaper that may publish the notices and the government agencies that receive individual notice of all modifications. 40 CFR 403.11(b)(1) (A) and (B).

b. What Additional Flexibility Is Being Considered as Part of the National Environmental Performance Track Program?

For POTWs with approved Pretreatment Programs that are part of the National Environmental Performance Track Program, EPA is proposing additional flexibility in the manner notice is provided of a request to modify the pretreatment program. This is similar to the flexibility being proposed for the publication of

industries in significant noncompliance (SNC).

Under today's proposed rule, a Performance Track POTW would have the discretion to either provide public notice of their Program Modification request through newspaper publication or by posting the request on a Web site. Today's proposal does not change the substantive requirements of any modification notification requirements. EPA believes that public notice through use of a Web site would provide faster public notice of Program Modifications and allow a more open process with greater opportunity for stakeholders to be involved. Importantly, the Performance Track POTW would continue to be required to provide individual notice to stakeholders that have requested individual notice. This would ensure that members of the community without access to a computer would still have notice of substantial program modifications.

The purpose of the current provision is to comply with the public participation requirements of the pretreatment program. Allowing POTWs to post modification requests on their Web sites would reduce the printing costs incurred by municipalities to publish the proposed change, while potentially providing increased public visibility and access to the information. Typically, newspaper notices are published once per week for two succeeding weeks; the Web site would include the information every day for the time necessary to finalize the modification. Also, the Web site will contain detailed information about the modification and the program in general. This will allow the public to more easily review and make decisions about the merit of the modification. As explained in the discussion of SNC, the internet provides an entirely new mechanism for access to information, and provides for the information to be available on a longer-term basis than in a single edition of a newspaper. It is also likely that local newspapers would utilize this information in their reporting on environmental issues.

The Agency solicits comment on whether it is necessary to require certain program modifications to be published in a newspaper. In particular, the Agency seeks comment on how it might dispense with newspaper publication of Program Modifications entirely for Performance Track POTWs while still providing equal and permanent access to this important information to all members of the community, regardless of socioeconomic status, race, or physical ability.

Under the existing rule, Approval Authorities may consider local notice by the POTW to constitute a program modification request and notice of decision under § 403.11(b)–(f). This issue is also addressed under § 403.18(c)(4). Under the existing rule, Approval Authorities also remain ultimately responsible for assuring the publication of the notice. POTWs are not required to provide the notice described in § 403.11. The existing rule leaves POTWs and Approval Authorities free to negotiate arrangements for the publication of the required notice. In the absence of voluntary and adequate notice by the POTW, the Approval Authority would still be required to provide the notice. In order for a local POTW public notice to substitute for an Approval Authority notice, the local notice must meet the requirements of § 403.11(b)(1). The existing rule acknowledges that Approval Authorities may find the notice provided by POTWs to be legally adequate. 40 CFR 403.18(c)(4).

In the preamble to the 1997 revisions to the regulations, EPA noted that one industry trade association argued that local procedures were not adequate.

> The commenter noted that there was no record that most significant changes are worked out in advance at the local level. The commenter asserted that a more objective forum is needed than the local forums, where decisions are diverse and not always based on environmental considerations. Because local participation varies, the commenter asserted that § 403.18 is needed to level the playing field. EPA agrees that Approval Authority review of modifications helps assure their consistency with state and federal regulations. State and EPA Approval Authorities retain the right to review modifications under today's rule regardless of who issues the notices. The lack of comments on State and EPA issued notices suggests that many issues are resolved at the local level. Approval Authorities must assure that notice provided at the local level is adequate and includes an opportunity to request a hearing from the Approval Authority.

Also in the 1997 revisions, EPA solicited comment on how the public might be educated as to the importance of Pretreatment Program requirements, so that public input will occur in response to notice of program modifications.

> ''One industry commenter stated that the content of public notices is not adequate for business to know what is being proposed. The commenter recommended that POTWs be required to directly notify businesses and to hold seminars to educate the businesses. One POTW supported allowing POTWs to provide notice but specifically opposed requiring POTWs to educate the public on the importance of the program.'' Also, ''An environmental group commented that public participation would be improved if POTWs were required to maintain a mailing list, with annual solicitation to be on the list, of parties wanting notice of non-substantial modifications. A similar procedure is already in place for substantial modifications.''

With today's action, EPA is soliciting comment on alternative methods for Public Notice to achieve the intent of § 403.11(b).

Today, EPA is proposing to allow approved Pretreatment Programs that are part of the National Environmental Performance Track Program to Public Notice all Program Modifications on a Web site in lieu of publication in the newspaper. Further, this Public Notice may be used by the Approval Authority to meet the requirements under 40 CFR 403.11. The information provided on the Web site would be more detailed than a notice of availability. The information would need to include an explanation of current requirements, a detailed description of the modification, and an explanation of the need for the modification.

As with the SNC issue, EPA is interested in views on how a substitution would affect the availability of this information to the public. Is the publication of this information on the Internet an adequate substitute for newspaper publication? Is access to the Internet readily available to all communities, for example via personal computers, libraries and schools? What would be adequate notice of this kind of a change in the public notice procedures? For example, back issues of newspapers are commonly available in the library.

4. Revisions to the Requirements for the Pretreatment Program Annual Report

a. What Are the Current Requirements?

For any POTW with an approved pretreatment program, a condition of the NPDES permit [*see* 40 CFR 403.12(i)] is that the POTW provide the Approval Authority (either the State or EPA, as applicable) with an annual report that briefly describes the POTW's program activities. These requirements must, at a minimum, include:

A. An updated list of all Industrial Users discharging to the POTW and, more specifically, a list of those IUs that are classified as Significant Industrial Users (SIUs) that are subject to categorical pretreatment standards and a description of what standards apply to each facility;

B. A summary of the status of each IU's compliance during the reporting period;

C. A summary of the compliance and enforcement activities conducted by the POTW during the reporting period; and

D. Any other specific information requested by the Approval Authority.

This information is critical for the Approval Authority to oversee both the industrial users and the POTW. The annual report provides the Approval Authority with information on the compliance of the industrial users that discharge into the POTW. It also provides information on the enforcement responses and activities that the POTW has undertaken.

b. What Additional Flexibility Is Being Proposed as Part of the National Environmental Performance Track Program?

EPA is proposing to modify the submission procedures for the annual report, as well as streamline one part of the annual report. Instead of annually submitting the report, the POTW must annually post the report on the POTW's website and provide written certification to the Approval Authority when the information has been posted. The information must remain accessible as part of the website for at least three years.

The POTW will be required to submit written copies of the annual reports every two years to the Approval Authority. The written report no longer needs to include compliance data for all IUs, although the website posting must still contain compliance data for all IUs. The written report need only include specific information for only those SIUs found to be in significant noncompliance (SNC) during the reporting period (2 years) instead of a summary of the status of all IU compliance over the reporting period. The submission every two years will contain reports for each of the two preceding years. The POTW's permit will be modified to incorporate this requirement and will require that the POTW post the annual report on the website and that all information posted must be accurate and truthful. If the annual report is not posted annually, or if it contains inaccurate information, it will be a violation of the NPDES permit. The POTW must provide a copy of the annual report to EPA, the State, or the public upon request.

EPA believes allowing a POTW to post the annual report on the website would reduce printing costs to the POTW and provide the public greater access to information about the POTW's program. The Agency is seeking comment on whether this is an appropriate option for the annual reports. There is no national database that tracks information on individual indirect dischargers, so the Agency relies upon the annual reports to oversee the compliance of these indirect dischargers. Furthermore, the States or EPA would still input summary information from the annual reports into EPA's national database (Permit Compliance System-PCS). EPA is seeking comment on how the extended time period for submitting the annual reports will impact programmatic and enforcement oversight overall.

C. 180-Day Accumulation Time for Performance Track Hazardous Waste Generators

1. Background

EPA is proposing to allow large quantity hazardous waste generators who are members in the Performance Track program up to 180 days (or up to 270 days if the generator must transport its waste, or offer its waste for transportation, a distance of 200 miles or more) to accumulate hazardous waste without a RCRA permit or interim status. This RCRA regulatory flexibility is intended to provide an additional incentive for membership in the Performance Track program, and should provide the Agency with useful information on the environmental, economic and other implications of extended accumulation times for hazardous waste generators. As discussed below, we believe that the regulatory flexibility provided in this rulemaking will also serve to ensure protection of human health and the environment at Performance Track facilities.

Including this RCRA incentive as part of the Performance Track program is consistent with the general objectives of the program, as discussed in Section IV of this preamble. In addition, this aspect of the proposal may assist EPA in learning more about how accumulation times for hazardous waste generators may affect the ultimate disposition of hazardous wastes (*e.g.,* recycling vs. disposal), the economics of hazardous waste generation and accumulation, and the overall environmental performance of hazardous waste generator facilities. More specifically, EPA believes that additional accumulation time may allow generators to accumulate enough waste to make transportation to waste management facilities more cost-effective and efficient for the generator. In particular, EPA is interested in learning whether additional accumulation time may result in increased recycling of generator waste (EPA has found this to be the case with F006 (metal finishing) hazardous waste, *see* 65 FR 12377). EPA also believes that additional accumulation time may result in environmental benefits related to the reduction in the movement and handling of hazardous waste on-site, as well as reduced off-site shipments.

The Performance Track program presents a good opportunity for EPA, the States and the regulated community to experiment with this type of regulatory flexibility in a way that should pose negligible incremental risks to human health or the environment. We believe that the criteria for membership in the Performance Track—strong past performance, effective EMSs, promised specific future improvements in environmental performance, and additional public reporting of environmental information—should ensure that this regulatory flexibility will be provided only to companies who will use it responsibly. This, combined with the safeguards built into the proposal and the relatively modest regulatory relief that the rule would provide (*i.e.,* additional time to accumulate waste), should ensure that this rulemaking is fully protective of human health and the environment.

2. What Are the Current Requirements for Large Quantity Generator Accumulation?

The current standards under 40 CFR part 262 for generators of hazardous waste who generate greater than 1,000 kilograms of hazardous waste per month (or one kilogram or more of acute hazardous waste), known as large quantity generators (LQGs), limit the amount of time hazardous waste can be accumulated at the generator's facility without a RCRA permit. According to § 262.34, LQGs may accumulate hazardous waste on-site for up to 90 days without having to obtain a RCRA permit. The generator must comply with certain unit-specific standards (*e.g.,* tank, container, containment building, and drip pad standards) for accumulation units, and certain general facility requirements such as for marking and labeling of containers, preparedness and prevention, and emergency response procedures. Generators may also petition the EPA Regional Administrator to grant an extension of up to 30 days to the 90-day accumulation time limit due to unforeseen, temporary, and uncontrollable circumstances, on a case-by-case basis (*see* § 262.34(b)).

Today's proposed rule would not make any changes to the existing regulations that apply generally to 90-day accumulation by LQGs, and EPA is not soliciting comment on those provisions or any other existing

provision of § 262.34. This includes the provisions for extended accumulation times for F006 wastes, which are specified at § 262.34(g). Those provisions, which apply only to generators who accumulate F006 wastes, allow for extended accumulation times that are similar in many respects (including the time limits) to those being proposed today for Performance Track members. It is therefore possible that, once today's rule is promulgated, a generator of F006 waste who is also a member in Performance Track could take advantage of extended accumulation times under either regulatory scheme (*i.e.,* under § 262.34(g), (h) and (i), or under § 262.34(j), (k) and (l)).

3. What is in Today's Proposal?

Today's proposed rule would allow LQGs of hazardous waste that are members of the Performance Track program to accumulate hazardous waste at their facilities for longer than the 90 days currently specified in § 262.34, subject to certain limitations and conditions. The proposal would not affect other existing generator requirements; for example, Performance Track members would still have to manifest their hazardous waste shipments (*see* Subpart B of part 262) and comply with other generator requirements in part 262 (*e.g.,* packaging and labeling of waste shipments).

The requirements for Performance Track extended accumulation times would be added as new paragraphs (j), (k) and (l) to subpart C of part 262. The following is a discussion of each proposed provision.

Time Limits. Proposed § 262.34(j)(1) specifies that hazardous waste generators who are Performance Track members may accumulate hazardous wastes for an extended period of time—up to 180 days, or up to 270 days if the generator must transport waste, or offer waste for transportation, over a distance of 200 miles or more. Such generators would not need RCRA permits or interim status if they stay within these limits. Note that these extended accumulation time limits would be consistent with the current limits for generators of F006 wastes (*see* § 262.34(g)).

Initial Notice. Under proposed § 262.34(j)(2), Performance Track generators would need to give prior notice to EPA or the authorized state agency of their intent to accumulate hazardous waste in excess of 90 days in accordance with these regulations. These notices will assist EPA and state agencies in monitoring implementation of this element of the Performance Track program. Such notices would need to identify the generator and facility, specify when extended accumulation at the facility will begin, and include a description of the wastes that will be accumulated for extended time periods and the units that will be used for that purpose.

The initial notice would also need to include a statement that the facility has made all changes to its operations, procedures and equipment necessary to accommodate extended time periods for accumulating hazardous wastes (§ 262.34(j)(2)(ii)). This is to address situations in which longer accumulation times may involve, for example, changing the design, location, or capacity of the unit(s) in which the wastes are accumulated. Such changes could affect how the facility addresses other generator requirements, such as those for personnel training or emergency response procedures. This statement in the notice should help ensure in advance that Performance Track members are aware of and have implemented any changes at the facility that may be needed to accommodate extended accumulation times.

For generators who intend to accumulate hazardous waste for as long as 270 days (because the waste must be transported, or offered for transport, more than 200 miles from the generating facility), the notice submitted by the generator would also need to contain a certification that an appropriate off-site hazardous waste management facility for the waste is not available within 200 miles of the facility. The provision for accumulation up to 270 days is intended primarily to address situations where wastes must be transported for considerable distances to off-site facilities, and where extended accumulation time may enable the facility to more efficiently ship fewer (but larger) loads of wastes to those facilities.

Today's proposal does not specify any particular criteria or restrictions as to what may be considered an ''appropriate'' hazardous waste management facility in this context. At a minimum, any such facility would need to be operating in compliance with applicable environmental regulations. However, EPA is concerned that the 270-day limit could conceivably be abused unless there is some further definition in the final rule as to what is meant by ''appropriate'' facility. The provision for accumulation of up to 270 days by Performance Track facilities is primarily intended by EPA to address situations where hazardous waste generators are located in areas remote from commercial hazardous waste facilities, or where the additional accumulation time is needed to facilitate beneficial, legitimate reuse or recycling of the wastes. The 270-day limit was not intended simply to provide additional convenience or cost savings for the generator. In any case, EPA requests comment as to whether the 270-day limit should be available under Performance Track only when the additional accumulation time allows the generator to achieve some specific environmental objective (*e.g.,* increased recycling rates), or whether other types of restrictions or limits should be placed on its availability to Performance Track members.

Standards for Accumulation Units. Another proposed condition ((262.34(j)(3)) would require Performance Track generators to accumulate hazardous wastes in storage units (such as containers, tanks, drip pads and containment buildings) that meet the standards for storing hazardous wastes at RCRA interim status facilities (*see* subparts I, J, W and DD of 40 CFR part 265, respectively). These are standard requirements for large quantity generators.

If Performance Track facilities use containers for extended accumulation of hazardous wastes, today's proposal would additionally require secondary containment systems for containers to prevent releases into the environment that might be caused by handling accidents, deterioration, or other circumstances. Secondary containment is a standard requirement for RCRA permitted facilities that use containers to store hazardous wastes containing free liquids and certain listed hazardous wastes (*i.e.,* F020, F021, F023, F026, and F027). It is not, however, typically required for hazardous waste generators or interim status facilities. We believe that requiring secondary containment in the context of this rulemaking is a reasonable, common-sense precaution to take in exchange for extending accumulation time limits.

EPA is also requesting comment on an option that would not require secondary containment for accumulation of hazardous wastes in containers. Specifically, we seek comment as to what type of containment is appropriate for Performance Track facilities, given that the containment requirements for permitted RCRA facilities are intended to ensure protections for what may essentially be indefinite storage of hazardous wastes, while accumulation at Performance Track generator facilities will be limited to 180 (or in some cases 270) days.

Because secondary containment involves the use of devices such as

berms or walls to prevent releases (*see* § 264.175), which are generally consistent with normal industry practices for handling and storage of hazardous materials, we believe that this secondary containment requirement will impose only minimal costs on Performance Track facilities. EPA solicits information regarding incremental compliance costs and benefits associated with the secondary containment requirement in this proposed rule.

There is currently an upper bound estimate of 43 facilities in the Performance Track program to which secondary containment provisions could apply. Cost estimates for installing secondary containment, if necessary, are based on the costs of installing secondary containment for tanks. Estimated installation costs range from $1,200 for 275-gallon tanks to $55,000 for 125,000 gallon tanks.[1] These estimates, however, are likely to represent an upper bound cost for containers, since construction of a secondary containment system for containers, such as a berm, is likely to be less than that required for tanks. The extent of total costs depends on how many Performance Track generators use containers holding solid hazardous wastes that would not presently have secondary containment units. Notable however, is anecdotal information that many of these facilities already have secondary containment installed at their facilities. EPA solicits comment on how many Performance Track facilities currently have secondary containment installed for containers.

Volume Limit. Under proposed § 262.34(j)(4), member generators would be allowed to accumulate no more than 30,000 kilograms of hazardous waste at the facility at any one time. The Agency has information that the typical capacity for a hazardous waste truck transport vehicle ranges from an average of approximately 16,400 kg to a maximum of approximately 27,300 kg.[2] In addition, generators shipping hazardous waste by rail may have capacities of approximately 50,000 kg.[3] Based on this preliminary information, EPA believes that a 30,000 kg waste accumulation limit is reasonable and appropriate in ensuring economical shipments of wastes in a wide range of transport vehicle sizes. We seek comment on this provision of today's proposal, as well as relevant information on: (a) The capacities of vehicles involved in hazardous waste shipping; (b) the likely impacts of less frequent shipments on the risks of spills and leaks at hazardous waste generating facilities and in the transport process; (c) the cost impacts of such changes—both transportation-related and other operational costs; and (d) other pros and cons of quantity limits larger or smaller than the 30,000 kilograms that we are proposing today.

Recordkeeping, Labeling and Marking. Proposed § 262.34(j)(5) specifies the types of records that program members would need to maintain at their facilities as a condition for extended accumulation times. These records are primarily intended to document that the accumulation time limits are not exceeded. Retaining these records is a standard requirement for all LQGs of hazardous waste.

Similarly, § 262.24(j)(6) would require that tanks and container units used for extended accumulation be marked or labeled with the words ''Hazardous Waste'', and containers would have to be marked to indicate when the accumulation period began. These are also standard conditions for hazardous waste generators, and are specified in this rule mainly for the sake of clarity.

General Facility Standards. Under current regulations, all hazardous waste generators are subject to certain general facility standards relating to personnel training, preparedness and prevention, and contingency plans and emergency procedures. These general facility requirements would also apply to Performance Track generators, and have been included in this rule for the sake of clarity.

Pollution Prevention. Under today's proposal Performance Track facilities would have to implement pollution prevention practices as a condition for using extended accumulation times. This condition is consistent with the Agency's general policy of encouraging waste minimization and pollution prevention as alternatives to disposal. It is also consistent with our goal of using Performance Track to recognize and encourage outstanding environmental performance. We seek comment on this condition. We also request comments on whether extended accumulation times for Performance Track generators should in some way be linked to achieving reductions of certain types of high-risk chemicals (*e.g.,* RCRA Waste Minimization Priority Chemicals that are known to be highly persistent, bioaccumulative, and toxic). For a list of these priority chemicals, *see http://www.epa.gov/epaoswer/hazwaste/minimize/chemlist/pdt-fact.pdf.*

Annual Report. Under proposed § 262.34(j)(9), Performance Track generators accumulating their hazardous waste for more than 90 days would be required to provide information regarding the impact of the additional accumulation time. This information would be submitted in the Annual Performance Report which is required of all Performance Track members (*see www.epa.gov/performancetrack,* or the document entitled ''National Environmental Performance Track Program Guide,'' EPA 240–F–01–002). Specifically, the report would need to include for the previous year information on the quantity of each hazardous waste that was accumulated for extended time periods, the number of off-site waste shipments, identification of destination facilities and how the wastes were managed at those facilities, information on the impact of extended accumulation time limits on the facility's operations (including any cost savings that may have occurred), and information on any on-site or off-site spills or other environmental problems associated with handling these wastes. The information submitted in these reports will assist the Agency in evaluating the success of this Performance Track program incentive, and may inform future Agency decisions pertaining to hazardous waste accumulation.

In accordance with today's rule, if in the past year a Performance Track generator accumulated hazardous waste for more than 180 days (but no more than 270 days), the generator would have to include in its Annual Performance Report a statement affirming that an appropriate off-site hazardous waste management facility was at the time (or is still) not available within 200 miles of the generating facility. This condition is intended to help ensure against any potential abuse of the provision that allows accumulation beyond 180 days under certain circumstances.

EPA believes that these annual reporting requirements are reasonable, and should not create undue burdens for Performance Track members. We solicit comments on these requirements of the proposed rule, including

[1] DPRA, Incorporated, ''Unit Cost Compendium'' prepared for U.S. EPA's Office of Solid Waste, Economics, Methods, and Risk Analysis Division, September 30, 2000 presents formulas for estimating the capital costs of installing secondary containment units for above ground storage tanks.

[2] Unit Cost Compendium, prepared by DPRA Incorporated, for USEPA, Office of Solid Waste, September 30, 2000 and personal communication with DPRA.

[3] Rail car capacities vary depending on whether the transport unit is a rail box car (from 160 cubic yards to 370-cubic yards), a rail gondola (from 15 cubic yards to 262 cubic yards), or a rail tanker (22,000 gallons), R.S. Means, Environmental Remediation Estimating Methods, 1997. In general, one cubic yard of solid equals 1.5 tons and one cubic yard of liquid equals 1 ton.

comments on how burdensome such reporting might be to program members, and whether there may be other means of obtaining the information EPA will need for monitoring the success of the Performance Track program.

Accumulation Time Extensions. Today's proposal would also add a new paragraph (k) to § 262.34, to address extensions of accumulation time limits in certain situations. This provision is consistent with the current regulations that apply generally to LQGs (*see* § 262.34(b)), and has been included in today's proposal for the sake of clarity. Specifically, it would allow the overseeing agency the option of granting a Performance Track generator an additional 30 days of accumulation time, if such extra time is needed due to unforseen, temporary and uncontrollable circumstances. We expect that requests for such time extensions would be reviewed and approved (or disapproved) in the same manner as they currently are for non-Performance Track LQGs.

Withdrawal/Termination from Program. Proposed § 262.34(l) would address situations in which a Performance Track facility that has been accumulating hazardous wastes for extended periods of time under these regulations decides to withdraw from the program, or when the overseeing agency has for some reason decided to terminate the generator's membership in the program. In such cases the generator would need to return to compliance as soon as possible, but no later than six months after withdrawal or termination, with the standard requirements for less-than-90-day accumulation by large quantity generators.

4. How Will Today's Proposal Affect Applicability of RCRA Rules in Authorized States?

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. (*See* 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, a State continues to have enforcement responsibilities under its law to pursue violations of its hazardous waste program. EPA continues to have independent authority under RCRA sections 3007, 3008, 3013, and 7003.

After authorization, Federal rules written under RCRA provisions that predate the Hazardous and Solid Waste Amendments of 1984 (HSWA), no longer apply in the authorized state. New Federal requirements imposed by those rules that predate HSWA do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

Today's proposed rule would not be promulgated under HSWA authorities. Consequently, the final rule would not amend the authorized program for states upon promulgation, and EPA would not implement the rule. The authorized RCRA program would change when EPA approves a State's application for a revision to its RCRA program.

For the proposed Performance Track Rule, EPA would encourage States to expeditiously adopt Performance Track regulations and begin program implementation. To revise the federally-authorized RCRA program, States would need to seek formal authorization for the Performance Track Rule after program implementation. EPA encourages states to begin implementing this incentive as soon as it is allowable under state law, while the RCRA authorization process proceeds.[4]

III. Other Potential Incentives: Consolidated Reporting

The program description for Performance Track (*www.epa.gov/performancetrack*) announces EPA's intention to initiate a pilot test of consolidated reporting, to be available for Performance Track facilities, as an incentive to encourage membership. Consolidated reporting would allow facilities to reduce the number or scope of reports submitted to EPA or its delegated authority under current regulations. It could provide for reductions or revisions in reporting elements or the submission of a single report in lieu of several reports now required by regulation. In addition, consolidated reporting could be designed to increase the extent to which environmental reporting could be integrated with the data systems facilities use to manage their manufacturing operations, thus reducing to some extent the need for environmental reporting data systems entirely separate from other data systems at the facility. From the public's perspective, such a revision of reporting requirements could also provide for more effective and transparent communication of information about a facility's environmental performance, within the constraints necessary for protecting confidential business information.

EPA has explored approaches to consolidated reporting with a variety of stakeholders. For example, under the Common Sense Initiative (CSI), the Agency made considerable progress in developing options for consolidated reporting on a multimedia basis for the computer and electronics industry. Since the Common Sense Initiative, EPA has continued to work with the petroleum refining industry to develop a consolidated reporting model focused on air reporting, with the long-term objective of expanding the approach on a multi-media basis.

EPA believes that the Performance Track provides a special opportunity to further explore the potential benefits of consolidated reporting. EPA believes that the Performance Track facilities would be an appropriate group for piloting an approach to consolidated reporting because these facilities are required to have well-developed environmental management systems and excellent compliance records. These qualifications indicate that a facility has a high level of organizational competence and a capacity to manage environmental data. Both of these factors are important because a consolidated reporting project will touch on several areas of regulation. In addition, a Performance Track facility's commitment to public reporting indicates an openness with regard to information sharing that can be expected to support the extensive EPA-facility coordination that this pilot would require. A Performance Track facility's commitment to going beyond regulatory requirements also gives evidence of the facility's ability to innovate, which is also a necessary quality in pilot projects.

One possible model for a Performance Track consolidated reporting pilot is the multimedia Consolidated Uniform Report for the Environment (CURE) initiative developed by the CSI consumer and electronics subcommittee. Over the course of more than three years, the subcommittee developed a consolidated reporting approach which would consolidate twelve federal and state reports in a single reporting system. The project was a joint effort of EPA and the Texas Natural Resource Conservation

[4] EPA encourages states to take this approach for less stringent federal requirements where rapid implementation is important. For example, EPA encouraged states to implement state Corrective Action Management Unit Regulations, once adopted as a matter of state law, prior to authorization (see 58 FR 8677, February 16, 1993).

Commission (TNRCC). As CSI concluded in 1998, the subcommittee and the CSI Council recommended that EPA continue the development of CURE. While CURE specifically focuses on the reports which are required for facilities in the computer and electronics sector, the stakeholders who participated saw the application to this sector as a pilot which would provide the opportunity to test a concept which could be applied more broadly. They also focused initially on some of the most generally applicable and broadest types of environmental reports, but the final report points out the potential—once a CURE pilot is underway—for exploring consolidation of a far wider array of data than is captured under the final draft report on CURE. Nonetheless, a system modeled on CURE would be a dramatic step towards a consolidated multi-media reporting system. It could potentially both substantially reduce the reporting burden for member facilities and increase both the accessibility and comprehensibility of facility information available to the public.

CURE tried to eliminate redundancies, to use ''smart'' programs to guide data submission, to create greater context for understanding of the data, and to provide for electronic submission to reduce and improve reporting. It reduced more than 800 data elements in current reports to approximately 400—including new data elements agreed to by stakeholders to facilitate better interpretation of the data. Five facilities tested a partial prototype of CURE in 1998. The CURE study estimated annual total savings of $250,000–$290,000 would be realized if most of the computer and electronics facilities in Texas could take advantage of such consolidated reporting.

There are, however, some limitations to the use of CURE as the model for a consolidated reporting pilot for Performance Track facilities:

- CURE focuses only on those reports of specific interest to computer and electronics facilities. To expand the CURE model for applicability to other sectors would require extensive additional effort, both by EPA and the states.
- Since CURE was developed in the context of Texas rules, additional work would need to be done both by EPA and the states, even for reports for the computer and electronics industry, to develop the model more fully for other states.
- There were a number of areas in which the CURE working group failed to reach consensus, which would require additional decisions. For example, the working group failed to reach agreement as to whether materials accounting data elements should be included, even on a voluntary reporting basis, within the CURE reporting system.
- While the CURE model covers many environmental reports commonly required of industrial facilities, it does not cover all reports. Many facilities would find that the CURE report model would substitute for several separate standard reports, but that they would still need to file additional reports to state or EPA offices for reporting obligations that are not covered by this consolidated report.

We have included additional information in the docket on the CURE study and how it might function as a pilot program.

EPA seeks comment on how best to establish a pilot consolidated reporting program for the Performance Track. EPA is particularly interested in which Performance Track applicants (and the States where they are located) would be interested in participating in a Consolidated Reporting Pilot. This would help EPA further define the scope for such a pilot program and the need for regulatory changes (both at the Federal and the State levels) necessary to implement consolidated reporting. In addition, EPA is interested in suggestions on the elements of a consolidated reporting system that would be most critical to Performance Track members, and how comprehensive the scope of such a pilot should be for facilities to benefit from participating in the pilot.

In order to meet the requirement that the party submitting the report be in a position to attest to the accuracy of the information reported, EPA expects that the person submitting the report will be required to be in a position to have such knowledge, and/ or would be required to attest to such knowledge in making the report. EPA solicits comment on how best to accomplish this goal.

EPA believes that it must promulgate at least some regulatory changes to make it possible for such a pilot program to take place. The scope and content of such changes would depend on the particular reports that would be included in such a pilot. We solicit comments on this. Commenters should also be aware that some States may have to modify existing regulations to permit facilities to use the consolidated reporting option. In some jurisdictions, permits may have to be amended before facilities may take advantage of this option. EPA is committed to consulting with the States on ways to tailor the consolidated reports to their needs and requirements. Potential members should consider how the pilot program would benefit them in spite of the existence of conflicting statutory or regulatory reporting due dates. EPA invites comments on this issue.

IV. Summary of Environmental, Energy and Economic Impacts

A. What Are the Cost and Economic Impacts?

The rulemaking changes being proposed today will reduce some reporting and other compliance costs for the covered facilities. Most of these cost reductions result from reduced waste management costs or reduced respondent reporting burden hours, so these proposed changes also reduce the total number of such hours resulting from EPA's regulatory programs.

EPA has completed the first three open enrollment periods for the Performance Track program. This resulted in a total of 281 facilities (mostly industrial facilities, but also a number of facilities in the service sector, several federal facilities and POTWs). Because EPA plans to solicit and to accept additional facilities into the program, it is not possible to project the cost and burden hour reductions with complete accuracy. Another factor that hinders such projections is that, just as membership in Performance Track is voluntary, it is up to the facilities themselves to decide which incentives apply to them and which to avail themselves of.

Maximum Achievable Control Technology: We estimate that there are approximately 12 current Performance Track facilities that may be eligible for the rule change. For these facilities with emissions of HAPs that are lower than the 25 ton per year aggregate or the 10 ton per year limit for an individual HAP, they may be able to submit a simplified annual report rather than multiple periodic reports. If we assume an average reduction of one periodic report per year (estimated to require an average of 25.5 labor hours), the cost savings per facility equals $1307. In the aggregate, we estimate a total cost savings for the 12 Performance Track facilities of $15,680 annually and a total reduction of 306 labor hours.

Alternative Environmental Performance-Based Incentives for POTWs in the Performance Track: Currently there is one POTW in the Performance Track program. To implement this incentive, it is estimated that a POTW would incur, on a one-time basis, 47 hours and $1837 in costs to request the pretreatment program modification required to use this incentive, publish the public notification of a change in the public

notice procedures to website posting, and a certification to the Approving Authority that the pretreatment annual report had been posted on its website. No net savings or costs are anticipated from the rule revision that allows POTWs to publish the list of SIUs in SNC annually on a website instead of in the newspaper, in part because any SNC that continues past 30 days will still need to be published in the newspaper. Any cost savings resulting from less newspaper text may be netted out by the additional costs of preparing the list for website publication. Similarly, the rule revisions that allow publication of the annual POTW report on the web and submitting the written report every other year to EPA or the state agency and the publication of modifications to pretreatment programs on the web are not likely to result in any cost savings. Lastly, it is difficult at this point to quantify the potential cost savings that could result by allowing POTWs to reclassify as ''nonsignificant'' CIUs which have no reasonable potential to adversely affect the POTW or to violate any applicable EPA pretreatment standard, and that have not been in noncompliance for the past three years. The net effect of this provision depends to a significant degree on the number and type of CIUs served by the POTW. We estimate that, for State and local authorities, some such authorities will need to spend time and money adopting revisions to their regulations to conform with the rulemaking changes we propose today and to re-open and re-issue permits to Performance Track facilities earlier than they would otherwise. However, these are primarily one-time costs, and we estimate that there will be long-term benefits from the simplifications we propose for reporting by POTWs and the reclassification of CIUs determined to be ''nonsignificant.''

180-Day Accumulation Time for Performance Track Hazardous Waste Generators: Potential aggregate transport cost savings for Performance Track member facilities that accumulate hazardous waste up to 180 days range from $14,900 to $77,100 per year, depending on the type of waste (*i.e.,* liquid or solid) and the distance the waste is transported.[5] The extent of savings depends on how many Performance Track generators are likely to take advantage of the provision. It is expected that Performance Track generators would only take advantage of this provision if it enables them to accumulate their wastes more efficiently and at a reduced cost. Although there is likely to be some reduction in labor hours for the Performance Track facilities, we do not anticipate it to be significant as most of the labor is included in the transporter's fees. Additional cost savings that have not been quantified are likely to result from costs associated with the handling and/or storage of hazardous waste, reduced pick-up costs, the reduced need for rush procurements, and a reduction in mobilization fees.

There may be additional costs for installation of secondary containment. There is currently an upper bound estimate of 43 facilities in the Performance Track program to which secondary containment provisions could apply. Cost estimates for installing secondary containment, if necessary, are based on the costs of installing secondary containment for tanks. Such costs range from $1,200 for 275-gallon tanks to $55,000 for 125,000 gallon tanks. The extent of costs depends on how many Performance Track generators use containers holding solid hazardous wastes that would not presently have secondary containment units. These estimates, however, are likely to represent an upper bound cost for containers, since construction of a secondary containment area for containers, such as a berm, is likely to be less than that required for tanks.[6] The extent of total costs depends on how many Performance Track generators use containers holding solid hazardous wastes that would not presently have secondary containment units.

Total Estimated Impact of Proposed Rule on Costs and Labor Hours

The total economic impact of the proposed rule for Performance Track facilities is estimated to range between a savings of $18,170 to $73,780, and between 40 and 119 labor hours on an annual basis depending on the number of facilities eligible for the rule and whether such facilities elect to avail themselves of the incentives. This estimate excludes the cost of secondary containment units because of the uncertainty associated with how many Performance Track facilities will need to install such units. Not all of these savings will be available immediately upon promulgation of this rulemaking because of the other actions necessary to make these incentives available to facilities. We estimate that the full resource savings described above will begin to be realized about two years after this rulemaking's promulgation or after the relevant state rule revisions are promulgated. Finally, these rulemaking changes will result in some increased costs for State/local agencies and EPA.

B. What Are the Health, Environmental and Energy Impacts?

We expect that there will be no adverse effects on the environment from the direct impacts of these rulemaking changes. As we discussed above, most of these changes relate to reporting, and do not in any way loosen the underlying environmental obligations of the Performance Track facilities. We expect that the reporting changes will not result in any of these facilities becoming more lax in their diligence.

EPA believes that its refocus of resources may lead to additional environmental compliance. Public recognition and reporting requirement relief, to the extent that they affect companies' bottom lines, may influence company decisions to undertake regulatory projects that go beyond regulatory requirements. The public will be able to judge the nature and magnitude of these environmental benefits by examining the annual reports that Performance Track facilities are required to prepare and make public.

V. Solicitation of Comments and Public Participation

We would like to have full public participation in arriving at our final decisions, and we encourage comment on all aspects of this proposal from all interested parties. Interested parties should submit supporting data and detailed analyses with their comments so we can make maximum use of them. Information on where and when to submit comments is listed in ''Comments'' under the **ADDRESSES** and **DATES** sections. Information on procedures for submitting proprietary information in the comments is listed in ''Comments'' under the **SUPPLEMENTARY INFORMATION** section.

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

The total economic impact of the proposed rule for Performance Track facilities is estimated to range between a savings of $18,170 to $73,780, and between 40 and 119 labor hours on an annual basis depending on the number of facilities eligible for the rule and whether such facilities elect to avail themselves of the incentives. Not all of these savings will be available

[5] Memorandum dated March 6, 2002 from Industrial Economics, Incorporated to EPA's Office of Policy, Economics, and Innovation.

[6] DPRA, Incorporated, ''Unit Cost Compendium'' prepared for U.S. EPA's Office of Solid Waste, Economics, Methods, and Risk Analysis Division, September 30, 2000 presents formulas for estimating the capital costs of installing secondary containment units for above ground storage tanks.

immediately upon promulgation of this rulemaking because of the other actions necessary to make these incentives available to facilities. The cost savings estimated for this proposed rulemaking could potentially be impacted (and result in total costs, not savings for the rulemaking) by any installation costs associated with installation of secondary containment. As noted in section IV A, secondary containment costs are not included in total rule cost savings estimate because of the uncertainty associated with how many Performance Track facilities will need to install such units.

Under Executive Order 12866, (58 FR 51,735 (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.

This action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 13132, Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule provides incentives that states can adopt to provide benefits to their state member facilities in the National Performance Track program. As a voluntary program, Performance Track allows states the option to adopt the provisions in this rule. Thus, Executive Order 13132 does not apply to this rule.

Stakeholders, including many states, were consulted during the development of the Performance Track Program. Many suggestions and ideas generated by states and other stakeholders provided the basis for some of the provisions in this rule. The stakeholder involvement process undertaken is fully discussed in Section I B of this document. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

C. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

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

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Any effects that Tribes may accrue from this rule will result in cost savings. Thus, Executive Order 13175 does not apply to this rule. Stakeholder involvement is discussed in Section I B of this document. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the 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 proposed 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. The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to the provisions of this rulemaking.

E. 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 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 04–4, 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.

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. Participation by facilities in the Performance Track is voluntary, and so is participation by state or local government agencies. There are no significant or unique effects on State, local, or tribal governments, however there may be some minor effects incurred by these entities. EPA projects these costs to be very low. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, as discussed in section I B and elsewhere, EPA did engage these stakeholders in the process of developing the National Environmental Performance Track Program.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to the Small Business Administration definition for the business's NAICS code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's rule will relieve regulatory burden and result in cost savings to entities, including any small entities, that are members of the Performance Track Program, so there will be no adverse impacts on small entities. Many small entities (both businesses and governments) and their association representatives were invited to, and attended, the public hearings we conducted early in 2000 on the design of the Performance Track program. 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 this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1922.01), and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue NW., Washington, DC 20460, by email at *auby.susan@epa.gov,* or by calling (202) 566–1672. You may also download a copy from the Internet at *http://www.epa.gov/icr.*

The total economic impact of the proposed rule for Performance Track facilities is estimated to range between a savings of $18,170 to $73,780, and between 40 and 119 labor hours on an annual basis depending on the number of facilities eligible for the rule and whether such facilities elect to avail themselves of the incentives. Not all of these savings will be available immediately upon promulgation of this rulemaking because of the other actions necessary to make these incentives available to facilities. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: (1) Review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

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

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for

EPA.'' Include the ICR number in any correspondence. Submit requests to present oral testimony on or before September 25, 2002. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 13, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by September 12, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique 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 (such as materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Thus, the provisions of NTTAA do not apply to this rulemaking and EPA is not considering the use of any voluntary consensus standards. We welcome comments on this aspect of the proposed rulemaking and, specifically, invite the public to identify potentially-applicable voluntary consensus standards and to explain why EPA should use such standards in this regulation.

List of Subjects

40 CFR Part 63

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

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 403

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 30, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, parts 63, 262 and 403 of title 40, chapter I of the Code of the Federal Regulations are 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.*

Subpart A—[Amended]

2. Section 63.2 is amended by adding in alphabetical order definitions of ''Periodic report,'' ''Pollution prevention,'' ''Source in the performance track'' and ''Source reduction'' to read as follows:

§ 63.2 Definitions.

* * * * *

Periodic report means the report of all information which is required to be reported on a periodic basis, including, but not limited to, monitoring information and required recordkeeping, as well as summaries of event-related reports.

* * * * *

Pollution prevention means ''source reduction,'' as defined under the Pollution Prevention Act (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation.

Source reduction, as defined in the Pollution Prevention Act means any practice which: reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. The term includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign or products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

* * * * *

Source in the Performance Track means a source which has been accepted by EPA for membership in the Performance Track Program (as described in www.epa.gov/performancetrack, formerly known as the Achievement Track Program) and is still a member of the program. The Performance Track program is a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results.

* * * * *

3. Section 63.10 is amended by:

a. Revising paragraph (d)(1); and

b. Adding paragraph (e)(3)(i)(D).

The revision and addition read as follows:

§ 63.10 Recordkeeping and reporting requirements.

* * * * *

(d) * * *

(1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, and except as provided in § 63.16, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

* * * * *

(e) * * *

(3) * * *

(i) * * *

(D) The affected source is complying with the Performance Track provisions of § 63.16, which allows less frequent reporting.

* * * * *

4. Section 63.16 is added to Subpart A and reads as follows:

§ 63.16 Performance track provisions.

(a) Notwithstanding any other requirements in this part, an affected source at any major source or any area source that is a member of the Performance Track, which is subject to regular periodic reporting under any subpart of this part, may submit such periodic reports at an interval that is twice the length of the regular period specified in the applicable subparts; provided, that for sources subject to permits under 40 CFR part 70 or 71 no interval so calculated for any report of the results of any required monitoring may be less frequent than once in every

six months. (b) Notwithstanding any other requirements in this part, the following modifications of reporting requirements apply to any major source that is a member of Performance Track which is subject to requirements under any of the subparts of this part and which has: (1) Reduced its total HAP emissions to less than 25 tons per year;

(2) Reduced its emissions of any individual HAP to less than 10 tons per year; and (3) Reduced emissions of all HAPs covered by each MACT standard to at least the level required by full compliance with the applicable emission standard. (c) For affected sources at any area source member of Performance Track and which meet the requirements of paragraph (b)(3) of this section, or for affected sources at any major source that meet the requirements of paragraph (b) of this section:

(1) If the emission standard to which the affected source is subject is based on add-on control technology, and the affected source complies by using add-on control technology, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is meeting the emission standard by continuing to use that control technology. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act Section 114(a)(3).

(2) If the emission standard to which the affected source is subject is based on add-on control technology, and the affected source complies by using pollution prevention, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is continuing to use pollution prevention to reduce HAP emissions to levels at or below those required by the applicable emission standard. The affected source must maintain records of all calculations that demonstrate the level of HAP emissions required by the emission standard as well as the level of HAP emissions achieved by the affected source. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act Section 114(a)(3).

(3) If the emission standard to which the affected source is subject is based on pollution prevention, and the affected source complies by using pollution prevention and reduces emissions by an additional 50 percent or greater than required by the applicable emission standard, then all required reporting elements in the periodic report may be met through an annual certification that the affected source is continuing to use pollution prevention to reduce HAP emissions by an additional 50 percent or greater than required by the applicable emission standard. The affected source must maintain records of all calculations that demonstrate the level of HAP emissions required by the emission standard as well as the level of HAP emissions achieved by the affected source. The affected source must continue to meet all relevant monitoring and recordkeeping requirements. The compliance certification must meet the requirements delineated in Clean Air Act Section 114(a)(3).

(4) Notwithstanding the provisions of paragraphs (c)(1) through (3), of this section, for sources subject to permits under 40 CFR part 70 or 71, the results of any required monitoring and recordkeeping must be reported not less frequently than once in every six months.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Section 262.34 is amended by adding paragraphs (j), (k), and (l) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(j) A generator member of the Performance Track Program, a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results (as described at *www.epa.gov/performancetrack,* formerly known as the Achievement Track Program), who generates 1000 kg or greater of hazardous waste per month (or one kilogram or more of acute hazardous waste) may accumulate hazardous waste on-site without a permit or interim status for an extended period of time, provided that:

(1) The generator accumulates the hazardous waste for no more than 180 days, or for no more than 270 days if the generator must transport the waste (or offer the waste for transport) more than 200 miles from the generating facility; and

(2) The generator first notifies the Regional Administrator and the Director of the authorized State in writing of its intent to begin accumulation of hazardous waste for extended time periods under the provisions of this section. Such advance notice must include:

(i) Name and EPA ID number of the facility, and specification of when the facility will begin accumulation of hazardous wastes for extended periods of time in accordance with this section; and

(ii) A description of the types of hazardous wastes that will be accumulated for extended periods of time, and the units that will be used for such extended accumulation; and

(iii) A statement that the facility has made all changes to its operations, procedures, including emergency preparedness procedures, and equipment, including equipment needed for emergency preparedness, that will be necessary to accommodate extended time periods for accumulating hazardous wastes; and

(iv) If the generator intends to accumulate hazardous wastes on-site for up to 270 days, a certification that an appropriate off-site hazardous waste management facility is not available within 200 miles of the generating facility; and

(3) The waste is managed in:

(i) Containers, in accordance with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265 and 40 CFR 264.175; or

(ii) Tanks, in accordance with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265, except for §§ 265.197(c) and 265.200; or

(iii) Drip pads, in accordance with subpart W of 40 CFR part 265; or

(iv) Containment buildings, in accordance with subpart DD of 40 CFR part 265; and

(4) The volume of hazardous waste that is accumulated for extended time periods at the facility does not exceed 30,000 kg; and

(5) The generator maintains the following records at the facility for each unit used for extended accumulation times:

(i) A written description of procedures to ensure that each waste volume remains in the unit for no more than 180 days (or 270 days, as applicable), a description of the waste generation and management practices at the facility showing that they are consistent with respecting the extended accumulation time limit, and documentation that the procedures are complied with; or

(ii) Documentation that the unit is emptied at least once every 180 days (or 270 days, if applicable); and

(6) Each container or tank that is used for extended accumulation time periods

is labeled or marked clearly with the words ''Hazardous Waste'', and for each container the date upon which each period of accumulation begins is clearly marked and visible for inspection; and

(7) The generator complies with the requirements for owners and operators in subparts C and D in 40 CFR part 265, with § 265.16, and with § 268.7(a)(5). In addition, such a generator is exempt from all the requirements in subparts G and H of part 265 of this chapter, except for § 265.111 and § 265.114; and

(8) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants released to the environment prior to its recycling, treatment or disposal; and

(9) The generator includes the following in its Performance Track Annual Performance Report, which must be submitted to the Regional Administrator and the Director of the authorized State:

(i) Information on the total quantity of each hazardous waste generated at the facility that has been managed in the previous year according to extended accumulation time periods; and

(ii) Information for the previous year on the number of off-site shipments of hazardous wastes generated at the facility, the types and locations of destination facilities, how the wastes were managed at the destination facilities (*e.g.,* recycling, treatment, storage or disposal), and what changes in on-site or off-site waste management practices have occurred as a result of extended accumulation times or other pollution prevention provisions of this section; and

(iii) Information for the previous year on any hazardous waste spills or accidents occurring at or from extended accumulation units at the facility, or during off-site transport of accumulated wastes; and

(iv) If the generator has accumulated hazardous wastes on-site for more than 180 days but less than 270 days, a certification affirming that an appropriate off-site hazardous waste management facility is not available within 200 miles of the generating facility; and

(k) If hazardous wastes must remain on-site at a Performance Track member facility for longer than 180 days (or 270 days, if applicable) due to unforseen, temporary and uncontrollable circumstances, an extension to the extended accumulation time period of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(l) If a generator who is a member of the Performance Track Program withdraws from the Performance Track Program, or if the Regional Administrator terminates a generator's membership, the generator must return to compliance with all otherwise applicable hazardous waste regulations as soon as possible, but no later than six months after the date of withdrawal or termination.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 403.3 is amended by revising paragraph (t)(2) to read as follows:

§ 403.3 Definitions.

* * * * *

(t) * * *

(2) Upon a finding that an industrial user meeting the criteria in paragraph (t)(1)(i) or (t)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in § 403.12(a)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with § 403.8(f)(6), determine that such industrial user is not a significant industrial user. The Control Authority may not determine that any industrial user meeting the criteria in paragraph (t)(1)(i) of this section is not a significant industrial user if the industrial user has been in noncompliance at any point during the 3 years preceding a potential determination.

* * * * *

3. Section 403.21 is added to read as follows:

§ 403.21 Pretreatment Program Under National Environmental Performance Track Program.

The Approval Authority may authorize a POTW that is a member of the National Environmental Performance Track Program, a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community outreach, and measurable results (as described at *www.epa.gov/performancetrack,* formerly known as the Achievement Track Program), to adopt legal authorities and requirements that are different from the requirements otherwise applicable under this part. The POTW must submit any such alternative requirements as a substantial program modification for approval by the Approval Authority in accordance with the procedures outlined in § 403.18. The Approval Authority must approve the modified program and include it as an enforceable provision of the POTW's NPDES permit before the POTW can implement any such modification. The Approval Authority must include a reopener clause in the POTW's NPDES permit that directs the POTW to discontinue implementing the approved alternative requirements and resume implementation of its previously approved pretreatment program, if the POTW no longer meets the eligibility criteria for the National Environmental Performance Track Program. The Approval Authority may authorize adoption of the following alternative requirements:

(a) A POTW that is a member of the National Environmental Performance Track Program may adopt an alternative approach to the requirement of § 403.8(f)(2)(vii) for a POTW to publish at least annually notification of Industrial Users (IUS) which were in significant noncompliance with pretreatment requirements (SNC) at any time during the previous twelve months. Under this alternative approach, the following is required:

(1) The POTW must adequately notify the public of the change in the public notice procedures;

(2) The POTW must annually public notice all IUS in SNC (as determined under § 403.8(f)(2)(vii)) on a website maintained and managed by the Control Authority. Notice of the violation must remain posted at this site for a period of no less than thirty days. The POTW must post an explanation of how SNC is determined, along with a contact name and phone number for information;

(3) The POTW must keep historic compliance data for all IUS on the website beginning with the first website publication. This historic compliance data must be easy to access, well-documented, and continual;

(4) If a violation is not corrected within thirty (30) calendar days, or if a violation results in pass through or interference, the POTW must also annually provide the newspaper public notice for these violations in the format specified in § 403.8(f)(2)(vii);

(5) The POTW must certify as part of its annual report required by § 403.12(i) that it posted the SNC data and the historic compliance data on the website; and

(6) The POTW must provide a hard copy of the public notice to the EPA, State, or public upon request.

(b) A POTW that is a member of the National Environmental Performance Track Program may take an alternative approach to the requirements of §§ 403.11 and 403.18 for public notification of modifications to approved pretreatment programs. Under this alternative approach, the following is required:

(1) The POTW must adequately notify the public of the change in public notice procedures;

(2) The POTW must post its public notice of program modifications under §§ 403.11 and 403.18 on a website maintained and managed by the Control Authority; and

(3) The POTW must provide a hard copy of the public notice to the EPA, State, or public upon request.

(c) A POTW that is a member of the National Environmental Performance Track Program may take an alternative approach to submitting its annual report under § 403.12 (i). Under this alternative approach, the following is required:

(1) The POTW must annually post their annual report (§ 403.12(i)) on a website maintained and managed by the Control Authority;

(2) The information must remain accessible as part of the website for at least three years;

(3) The POTW must provide written notice to the Approval Authority within five days of posting the annual report on the website. This notice must include a certification consistent with the certification language provided in 40 CFR 122.22(d) by an official attesting to the accuracy of the submitted information;

(4) Every other year, the POTW must submit a written report to the Approval Authority. The report must include specific information for only those SIUs found to be in significant noncompliance (SNC) during the reporting period instead of a summary of the status of all IU compliance over the reporting period; and

(5) The POTW must provide a written copy of the annual report containing all information currently required under § 403.12(i) to the EPA, State, or public upon request.

(d) A POTW that is a member of the National Environmental Performance Track Program shall prepare and maintain a list of its industrial users meeting the criteria in paragraph (a) of this section. The list shall identify the criteria in paragraph (a) of this section applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination pursuant to § 403.3 (t)(2) that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the Approval Authority pursuant to § 403.9 or as a non-substantial modification pursuant to § 403.18(b)(2). Modifications to the list shall be submitted to the Approval Authority pursuant to § 403.12(i)(1).

[FR Doc. 02–20347 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–7258–2]

Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Revisions to Regulations Requiring Availability of Information for Use of On-Board Diagnostic Systems and Emission-Related Repairs on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks and 2005 and Later Model Year Heavy-Duty Vehicles and Engines Weighing 14,000 Pounds Gross Vehicle Weight or Less; Notice of Document Availability

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, notice of document availability.

SUMMARY: On June 8, 2001, the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (66 FR 30830) proposing revisions to regulations requiring availability of information for use of on-board diagnostic systems (OBD) and emission-related repairs. One of the proposed changes specified that manufacturers comply with SAE Standardized Practice J2534 for ''pass-through reprogramming'' for MY 2003 and later OBD-equipped vehicles with reprogramming capabilities. At the time the proposal was issued in June 2001, SAE J2534 had not yet been finalized. In the proposal, EPA committed to issuing a notice of document availability in the **Federal Register** to announce that SAE J2534 had been finalized.

SAE J2534 was finalized in February of 2002 and is now available for inspection only in EPA Air Docket A–2000–49 (*see* **ADDRESSES**). In addition, interested parties can purchase this document directly from the Society of Automotive Engineers (SAE) (*see* **ADDRESSES**).

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–2000–49. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7549 and the facsimile number is (202) 260–4400 and the Internet e-mail is *a-and-r-docket@epamail.epa.gov.* A reasonable fee may be charged by EPA for copying docket material.

SAE J2534 can be purchased from the Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096–0001 or at *www.sae.org.*

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105, Telephone (734) 214–4288, or Internet e-mail at *pugliese.holly@epa.gov.*

Dated: August 5, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–20451 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 13

Implementation of the Equal Access to Justice Act in Agency Proceedings

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would extend the coverage of the Department's regulation implementing the Equal Access to Justice Act to include adversary administrative adjudications commenced after September 30, 1984. It would also amend the eligibility criteria and certain other aspects of that regulation to conform with amendments to the Act. Finally, it would reflect the separation of the Social Security Administration from HHS, and that component's establishment as an independent agency in 1995.

DATE: HHS will accept comments on this proposed rule through October 12, 2002. The Office of Management and Budget will accept comments on the amendments to §§ 13.10 through 13.12 through the same date.

ADDRESSES: Comments must be in writing. Please send them to: Katherine M. Drews, Acting Associate General

Counsel, Business and Administrative Law Division, Room 5362, 330 Independence Ave., SW., Cohen Building, Room 5362, Washington, DC 20201. Please send comments on the amendments to subpart B to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HHS.

FOR FURTHER INFORMATION CONTACT: Katherine M. Drews, Acting Associate General Counsel. Telephone: (202) 619–0150.

SUPPLEMENTARY INFORMATION:

Background

The Equal Access to Justice Act (EAJA), enacted in 1980, requires the Government to pay attorney fees to parties prevailing against it in litigation where the Government's position is not substantially justified. The Act applies to certain types of adversary administrative proceedings and to certain court litigation where attorney fees are not otherwise available.

The EAJA requires each agency to issue rules implementing the Act as it applies to administrative proceedings. The current rule of the Department of Health and Human Services (HHS) was published on October 4, 1983, and is codified at 45 CFR part 13. (All citations below to section 13 are to sections of 45 CFR part 13.)

The original Act had a sunset provision, causing it to expiring on September 30, 1984 (although it would continue to cover proceedings pending on that date). The HHS regulation presently in effect contains a similar sunset provision. A subsequent statutory change eliminated the sunset provision, revised the eligibility criteria for parties, and amended the Act in certain other respects. Public Law No. 99–80, 99 Stat. 183 (1985).

HHS published a Notice of Proposed Rulemaking to revise its EAJA regulation on June 19, 1987 (52 FR 23311). Pursuant to the notice, we received only one set of comments, from the Office of the Chairman of the Administrative Conference of the United States (ACUS), an agency that no longer exists. Since then, the Social Security Administration, certain proceedings of which were addressed in the proposed rule, became an independent agency. *See* Pub. L. No. 103–296, § 101 (codified at 42 U.S.C. 901). Also since than, the EAJA has been amended by section 231 of the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996). Because of those changes because substantial time has passed since the initial Notice of Proposed Rulemaking, we are publishing a new Notice of Proposed Rulemaking; this notice replaces the earlier notice. We considered the ACUS comments carefully, and this notice reflects some of those comments. This notice also reflects the changes effected by Pub. L. 104–121. Since the statutory change, we have been processing fee applications under the current regulation except to the extent that the amended statute requires changes.

This proposed rule would amend the existing rule in the following ways:

1. The Act provided for fee shifting only where the agency's position was not substantially justified. Pub. L.; 1–4–121 added a provision of fee shifting where the agency's demand was substantially in excess of the ultimate decision and was unreasonable when compared with decision. The proposed regulation would amend section 13.1, and would revise sections 13.5 and 13.10 (a)(2), to incorporate this new basis for fee awards. Pub. L. 104–121 also added a new category of party that would be eligible for a fee award, though only for awards made based on this excessive and unreasonable demand criterion. The proposed regulation would amend sections 13.4; 13.10(a)(3), (5); and 13.11(a) to the same effect.

2. The Act included a sunset clause, section 203(c), providing that the Act would not apply to administrative adjudications initiated after September 30, 1984. HHS's regulation includes a similar provisions, 45 CFR 13.2. Section 6(b)(1) of Pub. L. 99–80 repealed the sunset provision in the Act. The proposed regulation would similarly amend Section 13.2.

3. Section 13.3 generally provides that we have listed the covered proceedings in the Appendix to the rule. We propose revision this section to provide for situations involving proceedings not listed in the Appendix. The new provision would automatically cover proceedings where the procedural rights are incorporated by reference from certain statutes that we have already determined invoke the Act. It would also allow a party in any other administrative proceeding to file an EAJA application and claim coverage, and have the issue resolved in the resulting proceeding on the fee application.

4. Section 1(c)(1) of Pub. L. 99–80 increased the net worth limitations on parties eligible to recover fees under EAJA. It also added local government units to the categories of eligible entities. Section 7 of Pub. L. 99–80 makes these expanded eligibility criteria applicable to proceedings pending on or after August 5, 1985 (the effective date of that statute), and to proceedings commenced after September 30, 1984 (the sunset date of the original EAJA), even if finally disposed of before August 5, 1985. The proposed regulation would amend Sections 13.3(b) and 13.10(a)(5) to make the same changes with respect to the same categories of cases. The passage of time has made it unnecessary to provide explicitly for older cases. However, for proceedings commenced before October 1, 1984, and finally decided before August 5, 1985, the older eligibility criteria would govern, as follows: Individuals with a net worth of not more than $1 million; sole owners of unincorporated businesses if the owner has a net worth of not more than $5 million, including both personal and business interests, and if the business has no more than 500 employees; and all other partnerships, corporations, associations, or public or private organizations with a net worth of not more than $5 million and with not more than 500 employees.

5. Section 1(c)(3) of Pub. L. 99–80 defines the ''position of the agency'' to include the action or omission that was the basis for the proceeding, and section 1(a)(1) restricts the analysis of whether that position was substantially justified to the administrative record. The proposed regulation would revise sections 13.5(a) and 13.10(a)(2) likewise, and it would also amend section 13.25(a) to the same end.

6. We no longer take the position that the applicant must have actually paid (or must have actually become obligated to pay) the attorney fees and expenses in order to recover those fees and expenses under EAJA. Accordingly, the proposed regulation would delete the sentence in section 13.6(a) that stated this position.

7. Pub. L. 104–121 increased the allowable hourly rate for fees from $75 to $125. The proposed regulation would amend section 13.6(b) to the same effect.

8. The proposed regulation would amend section 13.12(d) to make clear that the adjudicative officer may require further substantiation of fees as well as expenses.

9. The EAJA and the HHS regulation require the prevailing party to file the fee application within 30 days of the final disposition of the administrative proceeding. 5 U.S.C. 504(a)(2); 45 CFR 13.22(a). Section 7(b) of Pub. L. 99–80 provides that, in cases commenced after September 30, 1984 (the sunset date of the original EAJA), and finally disposed of before August 5, 1985 (the effective date of the new law), this 30-day period runs from the latter date. The proposed

regulation would amend section 13.22(a) to this effect.

10. Section 1(B) of Pub. L. 99–80 provides that when the Government appeals the merits of a proceeding, any fee application is stayed until the appeal is finally resolved, and it specifies that a court decision is deemed to finally dispose of such an appeal only when that decision is final and unreviewable. There is a similar, but more inclusive, stay provision in section 13.22(d). The proposed regulation would amend sections 13.22(b) and (d) to conform with the statute. The proposed regulation would also revise section 13.23(a) to make clear that, when a fee proceeding is stayed in these circumstances, the agency need answer the fee application only after the final disposition of the underlying controversy.

11. The proposed rule would revise section 13.27 to designate as the review authority on fee decisions the same person or component that would have jurisdiction over an appeal of the merits of the adjudication. It would eliminate as unnecessary the requirement that the appellate authority review fee awards where neither party appeals. It would also revise section 13.27(b) to provide for cross-exceptions to be filed from an initial decision on a fee application.

12. Appendix A to the regulation lists the HHS proceedings that are covered by the regulation if the agency's litigating party enters an appearance and participates. The proposed regulation would revise the appendix to correct descriptions of categories of proceedings, to correct statutory citations for categories of proceedings, to add regulatory citations for categories, and to add new categories of proceedings that are covered.

13. The legislative history of Pub. L. 99–80 contains several references to the Social Security Administration Representation Project, under which SSA representatives participated in certain disability hearings involving Social Security benefits or Supplemental Security Income benefits. That project was discontinued in 1987. *See* 52 FR 17285 (May 7, 1987). We have taken the position that proceedings in that project were not within the scope of the EAJA as originally enacted, and thus Appendix A to the current regulation does not list them. The legislative history of Pub. L. 99–80 evidences the intent of some members of Congress that the EAJA as revised and amended should apply to cases in this project. As noted above, the project has been discontinued, and, in any case, the Social Security Administration is now an independent agency. However, we have determined that the EAJA should be applied to other HHS proceedings for which the statutory entitlement to a hearing rests either on a statute tracking the language of the provision underlying the disability hearings (section 205(b) of the Social Security Act, 42 U.S.C. 405(b)), or on a statute incorporating that provision by reference. Thus, the proposed regulation would add these proceedings to Appendix A.

Economic Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 (Federalism).

Executive Order 12866 (the Order) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant affects ($100 million or more in any 1 year).

We have determined that the proposed rule is consistent with the principles set forth in the Order, and we also find that the proposed rule would not have economically significant effects. In addition, the rule is not a major rule as defined at 5 USC 804(2). In accordance with the provisions of the Order, this regulation was reviewed by the Office of Management and Budget.

The Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The basis for the Secretary's certification is that, although small entities are eligible to apply for awards, the regulation will apply only to a small number of the proceedings held by the Department each year, and, in many of those proceedings, there will not be any fee award because the Department's position will be substantially justified or its demand will be reasonable. Also, most of the changes reflected in the regulation are mandated by the statue, so it is the statute rather than the regulation that would have any impact. Finally, the procedures prescribed by the regulation are no more onerous than those imposed by the current rule. In sum, the regulation will have negligible effect on such entities.

The Secretary states, in accordance with section 3(c) of Executive Order 12988 (Civil Justice Reform), that the Department has reviewed this regulatory proposal in light of section 3 of that Order and that the proposal meets the applicable standards in subsections (a) and (b) of that Order.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. As noted above, we find that this proposal would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive order 13132, and we find that there would be no substantial direct effect on the States, on the relationship between the States and the national Government, or on the distribution of power between the levels of government on our federal system. Thus, a federalism impact statement is not required.

Information Collection

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. Subpart B of the proposed 45 CFR part 13 contains collection of information requirements. These collection of information requirements are necessary to carry out the provisions of the EAJA. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

—Whether the information collection is necessary and useful to carry out the proper functions of the agency;
—The accuracy of the agency's estimate of the information collection burden;
—The quality, utility, and clarity of the information to be collected; and
—Recommendations to minimize the information collection burden on the

affected public, including automated collection techniques.

Section 13.10 of the proposed rule contains the requirements for the application for an award of fees and expenses. The burden associated with these requirements is the time and effort necessary for an applicant to prepare and submit the application. On an annual basis it is estimated that it will take 10 applicants 20 hours each to prepare and submit an application. The total annual burden associated with this requirement is 200 hours.

Section 13.11 of the proposed rule contains the requirements for the submission of the applicant's net worth exhibits. The burden associated with these requirements is the time and effort necessary for an applicant to prepare and submit the net worth exhibits. On an annual basis it is estimated that it will take 10 applicants 10 hours each to prepare and submit net worth exhibits. The total annual burden associated with this requirement is 100 hours.

Section 131.12 of the proposed rules contains the requirements for submission of the applicant's documentation of fees and expenses. The burden associated with these requirements is the time and effort necessary for an applicant to prepare and submit the fee and expense documentation. On an annual basis it is estimated that it will take 10 applicants 5 hours each to prepare and submit fee and expense documentation. The total annual burden associated with this requirement is 50 hours.

The Department will submit a copy of this proposed Rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection requirements, please mail copies directly to the following:

Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Allison Eydt, HHS Desk Officer.

List of Subjects in 45 CFR Part 13

Administrative practice and procedure, Claims, Equal access to justice.

For the reasons set out in the preamble, the Secretary proposes to amend 45 CFR part 13 as follows:

1. The authority citation for part 13 is revised to read as follows:

Authority: 5 U.S.C. 504(c)(1).

2. In § 13.1, the third sentence is revised to read as follows:

§ 13.1 Purpose of these rules.

* * * the Department may reimburse parties for expenses incurred in adversary adjudications if the party prevails in the proceeding and if the Department's position in the proceeding was not substantially justified or if the action is one to enforce compliance with a statutory or regulatory requirement and the Department's demand is substantially in excess of the ultimate decision and is unreasonable when compared with that decision. * * *

3. Section 13.2 is revised to read as follows:

§ 13.2 When these rules apply.

These rules apply to adversary adjudications before the Department.

4. Section 13.3 is amended by removing the last sentence in paragraph (a), by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b) as follows:

§ 13.3 Proceedings covered.

* * * * *

(b) If the agency's litigating party enters an appearance, Department proceedings listed in Appendix A to this part are covered by these rules. Also covered are any other proceedings under statutes that incorporate by reference the procedures of sections 1128(f), 1128A(c)(2), or 1842(j)(2) of the Social Security Act, 42 U.S.C. 1320a–7(f), 1320a–7a(c)(2), or 1395u(j)(2). If a proceeding is not covered under either of the two previous sentences, a party may file a free application as otherwise required by this part and may argue that the act covers the proceeding. Any coverage issue shall be determined by the adjudicative officer and, if necessary, by the appellate authority on review.

* * * * *

5. Section 13.4(b) is revised to read as follows:

§ 13.4 Eligibility of applicants.

* * * * *

(b) The categories of eligible applicants are as follows:

(1) Charitable or other tax-exempt organizations described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(2) Cooperative associations as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees;

(3) Individuals with a net worth of not more than $2 million;

(4) Sole owners of unincorporated businesses if the owner has a net worth of not more than $7 million, including both personal and business interests, and if the business has not more than 500 employees;

(5) All other partnerships, corporations, associations, local governmental units, and public and private organizations with a net worth of not more than $7 million and with not more than 500 employees; and

(6) Where an award is sought on the basis stated in § 13.5(c) of this part, small entities as defined in 5 U.S.C. 601.

* * * * *

6. Section 13.5 is amended by redesignating paragraphs (a) through (d) as paragraphs (b)(1) through (b)(4), respectively; adding new paragraph (a) and a paragraph (b) heading; revising newly designated paragraph (b)(1); and adding a new paragraph (c) to read as follows:

§ 13.5 Standards for awards.

(a) An award of fees and expenses may be made either on the basis that the Department's position in the proceeding was not substantially justified or on the basis that, in a proceeding to enforce compliance with a statutory or regulatory requirement, the Department's demand substantially exceeded the ultimate decision and was unreasonable when compared with that decision. These two bases are explained in greater detail in paragraphs (b) and (c) of this section.

(b) *Awards where the Department's position was not substantially justified.* (1) Awards will be made on this basis only where the Department's position in the proceeding was not substantially justified. The Department's position includes, in addition to the position taken by the agency in the proceeding, the agency action or failure to act that was the basis for the proceeding. Whether the Department's position was substantially justified is to be determined on the basis of the administrative record as a whole. The fact that a party has prevailed in a proceeding does not create a presumption that the Department's position was not substantially justified. The burden of proof as to substantial justification is on the agency's litigating party, which may avoid an award by showing that its position was reasonable in law and fact.

* * * * *

(c) *Awards where the Department's demand was substantially excessive and*

unreasonable. (1) Awards will be made on this basis only where the adversary adjudication arises from the Department's action to enforce a party's compliance with a statutory or regulatory requirement. An award may be made on this basis only if the Department's demand that led to the proceeding was substantially in excess of the ultimate decision in the proceeding, and that demand is unreasonable when compared with that decision, given all the facts and circumstances of the case.

(2) Any award made on this basis shall be limited to the fees and expenses that are primarily related to defending against the excessive nature of the demand. An award shall not include fees and expenses that are primarily related to defending against the merits of charges, or fees and expenses that are primarily related to defending against the portion of the demand that was not excessive, to the extent that these fees and expenses are distinguishable from the fees and expenses primarily related to defending against the excessive nature of the demand.

(3) Awards will be denied if the party has committed a willful violation of law or otherwise acted in bad faith, or if special circumstances make an award unjust.

7. In § 13.6, the second sentence of paragraph (a) is removed and the first sentence of paragraph (b) is amended by removing ''$75.00'' and adding in its place ''$125.00''.

8.–9. In § 13.10, paragraphs (a)(2) and (a)(3) and the first sentence of paragraph (a)(5) introductory text are revised; paragraph (a)(5)(i) is amended by removing the word ''or'' at the end and paragraph (a)(5)(ii) is amended by adding the word ''or'' at the end; and paragraph (a)(5)(iii) is added to read as follows:

§ 13.10 Contents of application.

(a) * * *

(2) Where an award is sought on the basis stated in § 13.5(b) of this part, a declaration that the applicant believes it has prevailed, and an identification of the position of the Department that the applicant alleges was not substantially justified. Where an award is sought on the basis stated in § 13.5(c) of this part, an identification of the statutory or regulatory requirement that the applicant alleges the Department was seeking to enforce, and an identification of the Department's demand and of the document or documents containing that demand;

(3) Unless the applicant is an individual, a statement of the number of its employees on the date on which the proceeding was initiated, and a brief description of the type and purpose of its organization or business. However, where an award is sought solely on the basis stated in § 13.5(c) of this part, the applicant need not state the number of its employees;

* * * * *

(5) A statement that the applicant's net worth as of the date on which the proceeding was initiated did not exceed the appropriate limits as stated in § 13.4(b) of this part. * * *

* * * * *

(iii) It states that it is applying for an award solely on the basis stated in § 13.5(c) of this part, and that it is a small entity as defined in 5 U.S.C. 601, and it describes the basis for its belief that it qualifies as a small entity under that section.

* * * * *

10.–12. Section 13.11(a) is amended by removing the first sentence and adding in its place the sentences reading as follows:

§ 13.11 Net worth exhibits.

(a) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 13.4(f) of this part) when the proceeding was initiated. This requirement does not apply to a qualified tax-exempt organization or cooperative association. Nor does it apply to a party that states that it is applying for an award solely on the basis stated in § 13.5(c) of this part. * * *

* * * * *

13. Section 13.12(d) is revised to read as follows:

§ 13.12 Documentation of fees and expenses.

* * * * *

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to § 13.25 of this part.

14. Section 13.22 is amended by revising paragraphs (b) and (d), as follows:

§ 13.22 When an application may be filed.

* * * * *

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

* * * * *

(d) If review or reconsideration is sought or taken, whether within the agency or to the courts, of a decision as to which an applicant believes it has prevailed, proceedings on the application shall be stayed pending final disposition of the underlying controversy.

15. In § 13.23(a), the first sentence is removed and two sentences are added in its place to read as follows:

§ 13.23 Responsive pleadings.

(a) The agency's litigating party shall file an answer within 30 calendar days after service of the application or, where the proceeding is stayed as provided in § 13.22(d) of this part, within 30 calendar days after the final disposition of the underlying controversy. The answer shall either consent to the award or explain in detail any objections to the award requested and identify the facts relied on in support of the agency's position. * * *

* * * * *

16. Section 13.25(a) is amended by adding the following sentence at the end:

§ 13.25 Further proceedings.

(a) * * * In no such further proceeding shall evidence be introduced from outside the administrative record in order to prove that the Department's position was, or was not, substantially justified.

* * * * *

17. Section 13.27 is revised to read as follows:

§ 13.27 Agency review.

(a) The appellate authority for any proceedings shall be the official or component that would have jurisdiction over an appeal of the merits.

(b) If either the applicant or the agency's litigating party seeks review of the adjudicative officer's decision on the fee application, it shall file and serve exceptions within 30 days after issuance of the initial decision. Within another 30 days after receipt of such exceptions, the opposing party, if it has not done so previously, may file its own exceptions to the adjudicative officer's decision. The appellate authority shall issue a final decision on the application as soon as possible or remand the application to the adjudicative officer for further proceedings. Any party that does not file and serve exceptions within the stated time limit loses the opportunity to do so.

18. Appendix A to part 13 is revised to read as follows:

Appendix A To Part 13

Proceedings covered	Statutory authority	Applicable regulations
Office of Inspector General		
1. Proceedings to impose civil monetary penalties, assessments, or exclusions from Medicare and State health care program.	42 U.S.C. 1320a–7a(c)(2); 1320b–10(c); 1395l–3(b)(3)(B)(ii), (g)(2)(A)(i); 1395*l*(h)(5)(D), (i)(6); 1395m(a)(11)(A), (a)(18), (b)(5)(C), (j)(2)(A)(iii); 1395u(j)(2), (k), (*l*)(3), (m)(3), (n)(3), (p)(3)(A); 1395y(b)(3)(C), (b)(6)(B); 1395cc(g); 1395dd(d)(1)(A), (B); 1395mm(i)(6)(B); 1395nn(g)(3), (4); 1395ss(d); 1395bbb(c)(1); 1396b(m)(5)(B); 1396r(b)(3)(B)(ii), (g)(2)(A)(i); 1396t(i)(3); 11131(c); 11137(b)(2).	42 CFR Part 1003; 42 CFR Part 1005.
2. Appeals of exclusions from Medicare and State health care programs and/or other programs under the Social Security Act.	42 U.S.C. 1320a–7(f); 1395*l*(h)(5)(D); 1395m(a)(11)(A), (b)(5)(C); 1395u(j)(2), (k), (*l*)(3), (m)(3), (n)(3), (p)(3)(B).	42 CFR Part 1001; 42 CFR Part 1005.
3. Appeal of exclusions from programs under the Social Security Act, for which services may be provided on the recommendation of a Peer Review Organization.	42 U.S.C. 1320c–5(b)(4), (5)	42 CFR Part 1004; 42 CFR Parts 1005.
4. Proceedings to impose civil penalties and assessments for false claims and statements.	31 U.S.C. 3803	45 CFR Part 79.
Centers for Medicare and Medicaid Services		
1. Proceedings to suspend or revoke licenses of clinical laboratories.	42 U.S.C. 263a(i); 1395w–2	42 CFR Part 493, Subpart R.
2. Proceedings provided to a fiscal intermediary before assigning or reassigning Medicare providers to a different fiscal intermediary.	42 U.S.C. 1395h(e)(1)–(3)	42 CFR 421.114, 421.128.
3. Appeals of determinations that an institution or agency is not a Medicare provider of services, and appeals of terminations or nonrenewals of Medicare provider agreements.	42 U.S.C. 1395cc(h); 1395dd(d)(1)(A)	42 CFR 489.53(d); 42 CFR Part 498.
4. Proceedings before the Provider Reimbursement Review Board when Department employees appear as counsel for the intermediary.	42 U.S.C. 1395oo	42 CFR Part 405, Subpart R.
5. Appeals of CMS determinations that an intermediate care facility for the mentally retarded (ICFMR) no longer qualifies as an ICFMR for Medicaid purposes.	42 U.S.C. 1396i	42 CFR Part 498.
6. Proceedings to impose civil monetary penalties, assessments, or exclusions from Medicare and State health care programs.	42 U.S.C. 1395l–3(h)(2)(B)(ii); 1395*l*–(q)(2)(B)(i); 1395m(a)(11)(A), (c)(4)(C); 1395w–2(b)(2)(A); 1395w–4(g)(1), (g)(3)(B), (g)(4)(B)(ii); 1395nn–(g)(5); 1395ss–(a)(2), (p)(8), (p)(9)(C), (q)(5)(C), (r)(6)(A), (s)(3), (t)(2); 1395bbb(f)(2)(A); 1396r(h)(3)(C)(ii); 1396r–8(b)(3)(B), (C)(ii); 1396t(j)(2)(C); 1396u(h)(2).	42 CFR Part 1003.
7. Appeals of exclusions from Medicare and State health care programs and/or other programs under the Social Security Act.	42 U.S.C. 1395*l*(q)(2)(B)(ii); 1395m(a)(11)(A), (c)(5)(C); 1395w–4(g)(1), (g)(3)(B), (g)(4)(B)(ii).	42 CFR Part 498; 42 CFR 1001.107.
Food and Drug Administration		
1. Proceedings to withdraw approval of new drug applications.	21 U.S.C. 355(e)	21 CFR Part 12: 21 CFR 314.200.
2. Proceedings to withdraw approval of new animal drug applications and medicated feed applications.	21 U.S.C. 360b(e), (m)	21 CFR Part 12; 21 CFR Part 514, Subpart B.
3. Proceedings to withdraw approval of medical device premarket approval applications.	21 U.S.C. 306e(e), (g)	21 CFR Part 12.
Office for Civil Rights		
1. Proceedings to enforce Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin by recipients of Federal financial assistance.	42 U.S.C. 2000d–1	45 CFR 80.9.
2. Proceedings to enforce section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap by recipients of Federal financial assistance.	29 U.S.C. 794a; 42 U.S.C. 2000d–1	45 CFR 84.61.
3. Proceedings to enforce the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age by recipients of Federal financial assistance.	42 U.S.C. 6104(a)	45 CFR 91.47.
4. Proceedings to enforce Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in certain education programs by recipients of Federal financial assistance.	20 U.S.C. 1682	45 CFR 86.71.

Dated: May 10, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–20307 Filed 8–12–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 156
Tuesday, August 13, 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

Office of the Secretary

Notice of Establishment of New Advisory Committee and Solicitation for Nomination to the Research, Education, and Economics Task Force

AGENCY: Agricultural Research Service, United States Department of Agriculture.

ACTION: Establishment and Solicitation for Nominations.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces the establishment of the Research, Education, and Economics Task Force and the solicitation for nominations to fill the 8 membership positions.

DATES: Deadline for Task Force member nominations is August 30, 2002.

ADDRESSES: Address all nominations to Marshall Tarkington, U.S. Department of Agriculture, Agricultural Research Service, 1400 Independence Avenue SW., 351–A Jamie Whitten Building, Washington, DC 20250 or fax the information to 202–720–6882.

FOR FURTHER INFORMATION CONTACT: Marshall Tarkington, 202–720–3173.

SUPPLEMENTARY INFORMATION: Sec. 7404 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, authorized the creation of a Task Force comprised of 8 members, primarily from the private sector and having broad-based background in plant, animal, and agricultural sciences research, food, nutrition, biotechnology, crop production methods, environmental science, or related disciplines. The members must also be familiar with the role and infrastructure used to conduct Federal and private research, including the Agricultural Research Service; the National Institutes of Health; the National Science Foundation; the National Aeronautics and Space Administration; the Department of Energy laboratory system; or the Cooperative State Research, Education, and Extension Service. Nominees will be carefully reviewed for their broad expertise, leadership, and relevance to this criteria. Additional information regarding the Task Force mandate and membership is in the attached charter.

Nominations are being accepted from individuals, organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests. Please indicate the specific qualification(s) for each nominee. Each nominee must fill out a form AD–755, ''Advisory Committee Membership Background Information'', which can be obtained on the following web link: *(http://www.ars.usda.gov/newla/ree_task.html)*. Each nomination submission must include the nominee's name, resume, and completed AD–755. Incomplete nomination documentation will not be considered and all nominations will be vetted before selection by the Secretary.

Dated: August 6, 2002.

Edward B. Knipling,

Acting Administrator.

[FR Doc. 02–20467 Filed 8–12–02; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

National Sheep Industry Improvement Center; Inviting Grant Proposals for the Sheep and Goat Industry Grant Initiative

AGENCY: National Sheep Industry Improvement Center, USDA.

ACTION: Notice.

SUMMARY: The National Sheep Industry Improvement Center (NSIIC) announces the availability of approximately $200,000 in competitive grants for product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention or animal health. Funds have been made available by the Board of Directors of the National Sheep Industry Improvement Center (NSIIC) to be awarded in Fiscal Year (FY) 2003 with projects completed by the end of FY 2004. The intent is to fund a variety of proposals that will benefit the U.S. sheep and goat industries.

DATES: Completed proposals must be received no later than October 15, 2002. Proposals received after that date will not be considered.

ADDRESSES: Completed proposals and other required materials should be submitted to Jay B. Wilson, Executive Director, National Sheep Industry Improvement Center, U.S. Department of Agriculture, PO Box 23483, Washington, DC 20026–3483 if using the US Postal Service or Room 2117, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250 if using other carriers. Telephone (202) 690–0632 or (207) 236–6567.

FOR FURTHER INFORMATION CONTACT: Jay B. Wilson, Executive Director, National Sheep Industry Improvement Center, U.S. Department of Agriculture, PO Box 23483, Washington, DC 20026–3483 if using the US Postal Service or Room 2117, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250 if using other carriers. Telephone (202) 690–0632 or (207) 236–6567.

SUPPLEMENTARY INFORMATION:

General Information

The Board of Directors of the National Sheep Industry Improvement Center (NSIIC) makes this grant initiative of up to $200,000 available. The NSIIC is authorized under section 375 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2008j). A fund is established in the Treasury of the United States, without fiscal year limitations, to provide funds for the enhancement and marketing of sheep or goat products in the United States. Grants are authorized by section 375(e)(3)(A) of the Consolidated Farm and Rural Development Act.

Projects that are submitted in the proposals should be completed in a timely fashion as provided in the proposal, but under no circumstances later than September 30, 2004. The primary objective of the Sheep and Goat Industry Grant Initiative (SGIGI) is to fund a number of diverse projects that will benefit the U.S. sheep or goat industries through product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention or animal health at the

regional, national or international level. The program is administered through USDA, NSIIC.

Eligible Applicants

An Eligible entity is an organization that promotes the betterment of the United States sheep or goat industries that is: (A) A public, private, or cooperative organization; (B) an association, including a corporation not operated for profit; (C) a federally recognized Indian Tribe; or (D) a public or quasi-public agency. Individuals are ineligible. Eligible entities must have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501 (c)(4)) which engages in lobbying activities, is not eligible to apply.

Use of Funds

Use of funds should directly impact the U.S. sheep or goat industries through product or business development, producer information or education, marketing and promotion for sheep or goats or their products, genetic retention, or animal health programs. Funds may not be used to: (a) Pay costs of preparing the application package; (b) pay costs incurred prior to the effective date of the grant; (c) conduct duplicative research; or (d) fund political activities. Preference may be given to proposals that have over 50 percent of the project costs in matching funds, including in kind contributions, Overhead costs cannot exceed 25 percent.

Available Funds and Award Limitations

The total amount of funds available for grants in FY 2003 is approximately $200,000. It is anticipated that all funds will be awarded in FY 2003 for projects that will be completed by September 30, 2004. It is expected that there will be proposals submitted that address a variety of needs related to the U.S. sheep and goat industries. Awards will be segregated so that a variety of needs will be addressed by the funded proposals. The actual number of grants funded will depend on the quality of proposals received and the amount of funding requested. A proposal may be partially funded or funded in its entirety. The maximum amount of Federal funds through this grant initiative awarded for any one proposal will be $50,000.

Selection Criteria

The proposal will initially be reviewed to determine whether the entity submitting the proposal meets the eligibility requirements and whether the proposal application contains the information required. After this initial evaluation, the following criteria will be used to rate and rank proposals received in response to this notice of funding availability. Failure to address any one of the criteria will disqualify the proposal. Equal weight shall be given to each of the criterion listed below and points will be awarded to each criterion on a scale of 5, 4, 3, 2, 1. A score of 5 indicates that the proposal was judged to be highly relevant to the criteria and a score of 1 indicates that the proposal was judged not to sufficiently address the criteria. Each proposal criteria area will be evaluated and judged on its own merits using the following criteria:

1. *Potential Industry Impact*—Describe the proposed project and demonstrate how it will stimulate the U.S. sheep or goat industries. Provide a detailed analysis of the sheep or goat industry issue that is being addressed by the proposal by including the: (A) Product or group that will be impacted by the proposal (B) geographic area affected (C) target audience or end user; (D) and expected results. Is the industry issue and need well-defined? Does the proposed project provide an effective and efficient approach to resolving the identified need?

2. *Industry Commitment*—Describe the commitment of the producers, processor, end-users or other involved parties in participating in the proposed project. This may include, but is not limited to, individual producers, producer groups, processors, seminar participants, local organizations, local or state governments or trade associations. Is there a commitment from all who are expected to participate and benefit from the proposed project?

3. *Business Soundness*—Provide a timetable and objectives along with a quantifiable benchmark and expected results. Does the proposal include: (A) A clear objective; (B) well-defined tasks that will accomplish the objectives; (C) realistic benchmarks; (D) a realistic timetable for the completion of the proposed tasks? Has the business strategy been adequately developed?

4. *Financial Feasibility*—Provide a well-defined budget for the proposal. Are the funding requirements and budget for the project well defined and financially feasible? Are matching funds or other resources that will be used to leverage the requested funds in the proposal identified?

5. *Management Ability*—Identify the management team needed to complete the proposal objectives and describe their qualifications. Is the management team identified, and are they capable of implementing the proposal?

Selection Process

The Board of Directors of the NSIIC will evaluate proposal applications. Applications will be evaluated competitively and points awarded as specified in the Selection Criteria section of this notice. Grants will be awarded on a competitive basis to eligible entities. A proposal may be partially funded. After assigning points based upon those criteria, applications will be funded in rank order until all available funds have been expended. The Board of Directors reserves the right to award up to five additional points in order to provide a diversity of projects targeting various situations, geographic areas, subject matter distribution of funded projects, or for proposals with over 50 percent in matching funds. Projects that are approved for further processing will be subject to the grant terms that are negotiated between the applicant and the Board of Directors including, but not limited to, the amount to be funded, project goals, timetables, completion date or other terms as deemed necessary.

Proposal Submission

All proposals, except for forms, are to be submitted on standard 8.5′ × 11′ paper with typing on one side of the page only. In addition, margins must be at least 1'', type must be 12 characters per inch (12 pitch or 10 point) or larger, no more than 6 lines per inch, and there should be no page reductions.

Content of a Proposal

A proposal should contain the following:

1. Form SF–424 ''Application for Federal Assistance.''

2. Form SF–424A ''Budget Information-Non Construction Programs.''

3. Form SF–424B ''Assurances-Non Construction Programs.''

4. *Table of Contents*—For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Page numbering should begin immediately following the Table of Contents.

5. *Project Summary*—The proposal must contain a project summary of 1 page or less on a separate page. This page must include the title of the project

and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents.

6. *Project Narrative*—The narrative portion of the Project Proposal is limited to 10 pages of text and should contain the following:

a. *Introduction.* A clear statement of the goals and objectives of the project. The problem should be set in context of the present-day situation. Summarize the body of knowledge which substantiates the need for the proposed project.

b. *Rationale and Significance.* Substantiate the need for the proposed project. Describe the impact of the project on the U.S. sheep or goat industry. Describe the project's specific relationship to the segment of sheep or goat industry issue, product or market being addressed.

c. *Objectives and Approach.* Discuss the specific objectives to be accomplished under the project. A detailed description of the approach must include: (1) Techniques or procedures used to carry out the proposed activities and for accomplishing the objectives; (2) The results expected.

d. *Time Table.* Tentative schedule for conducting the major steps of the project.

e. *Evaluation.* Provide a plan for assessing and evaluating the accomplishments of the stated objectives during the project and describe ways to determine the effectiveness (impact) of the end results upon conclusion of the project. Awardees will be required to submit written project performance reports on a semi-annual basis.

f. *Coordination and Management Plan.* Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration.

What To Submit

An original and 10 copies must be submitted. Each copy must be stapled in the upper left-hand corner. (DO NOT BIND). All copies of the proposal must be submitted in one package.

Other Federal Statutes and Regulations That Apply

Several Federal statutes and regulations apply to proposals considered for review and to grants awarded by USDA. These include, but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR part 15a—USDA implementation of title VI of the Civil Rights Act of 1964.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations.

7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR part 3017—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for drug-free workplace (grants).

7 CFR part 3018—New Restrictions on Lobbying.

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—Audits of State, Local Governments, and Non-Profit Organizations.

The terms of the above parts will be incorporated in a grant made by the NSIIC.

Public Burden in This Notice

Form SF–424, ''Application for Federal Assistance.'' This form is used by applicants as a required face sheet for applications for Federal assistance.

Form SF–424A, ''Budget Information-Non Construction Programs.'' This form must be completed by applicants to show the project's budget breakdown, both as to expense categories and the division between Federal and non-Federal sources.

Form SF–424B, ''Assurances-Non Construction Programs.'' The applicant must complete this form to give the Federal government certain assurances that the applicant has the legal authority to apply for Federal assistance and the financial capability to pay the non-Federal share of project costs. The applicant also gives assurance it will comply with various legal and regulatory requirements as described in the form.

Grantees will be required to sign a grant agreement acceptable to the NSIIC.

Reporting Requirements

In addition to any other required reports, awardees will be required to submit written project performance reports on a semi-annual basis and a final report at the completion of the project. The project performance report and final report shall include, but need not be limited to: (1) A comparison of timeline, tasks and objectives outlined in the proposal as compared to the actual accomplishments; (2) If report varies from the stated objectives or they were not met, the reasons why established objectives were not met; (3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives; (4) Objectives established for the next reporting period; and (5) Status of compliance with any special conditions on the use of awarded funds.

Dated: July 31, 2002.

Jay B. Wilson,

Executive Director, National Sheep Industry Improvement Center.

[FR Doc. 02–20402 Filed 8–12–02; 8:45 am]

BILLING CODE 1351–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–030N]

Codex Alimentarius Commission: 21st Session of the Codex Committee on Processed Fruits and Vegetables

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Agricultural Marketing Service (AMS), are sponsoring a public meeting on August 13, 2002, to provide information and receive public comments on agenda items that will be discussed at the Codex Committee on Processed Fruits and Vegetables (CCPFV), which will be held in San Antonio, Texas, on September 23–27, 2002. The Under Secretary and AMS recognize the importance of providing interested parties with information about the Processed Fruits and Vegetables Committee of the Codex Alimentarius Commission (Codex) and to address items on the Agenda for the 21st CCPFV.

DATES: The public meeting is scheduled for Tuesday, August 13, 2002 from 10:00 am to 12:00 noon.

ADDRESSES: The public meeting will be held in Room 3501 South Building, United States Department of Agriculture, 1400 Independence Avenue

SW., Washington, DC. To receive copies of the documents referenced in this notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*. If you have comments, please send an original and two copies to the FSIS Docket Clerk and reference Docket # 02–030N. All comments submitted will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. William James, Acting Director, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Dr. James at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency manage and carry out U.S. Codex.

The Codex Committee on Processed Fruits and Vegetables elaborates world wide standards for various processed fruits and vegetables, including certain dried and canned products. This committee does not cover standards for fruit and vegetable juices. The Commission has also allocated to this Committee the work of revision of standards for quick frozen fruits and vegetables. The Committee is chaired by the United States of America.

Issues to Be Discussed at the Public Meeting

The provisional agenda items will be discussed during the public meeting:

1. Adoption of the Agenda
2. Matters Referred by the Codex Alimentarius Commission and other Codex Committees
3. Consideration of Codex Draft Revised Standards at Step 7
   - Canned Bamboo Shoots
   - Pickled Products
   - Canned Stone Fruits
   - Guidelines for Packing Media for Canned Fruits
   - Aqueous Coconut Products
4. Consideration of Proposed Draft Codex Standards at Step 4
   - (a.) Proposed Draft Code of Practice for the Processing and Handling of Quick Frozen Foods
   - (b.) Proposed Draft Codex Standards for Processed Fruits and Vegetables
   - Canned Citrus Fruits
   - Ginseng
   - Jams, Jellies and Marmalades
   - Soy Sauce
   - Canned Tomatoes
   - Processed Tomato Concentrates
   - Canned Vegetables
   - Guidelines for Packing Media for Canned Vegetables
5. Methods of Analysis for Processed Fruits and Vegetables
6. Proposals for Amendments to the Priority List for the Standardization of Processed Fruits and Vegetables
7. Other Business and Future Work

Each issue listed will be fully described in documents distributed, or to be distributed, by the United States' Secretariat to the Meeting. Members of the public may access or request copies of these documents (*see* **ADDRESSES**) .

Public Meeting

At the August 13th public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 21st CCPFV (Docket # 02–030N).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: August 8, 2002.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 02–20445 Filed 8–12–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma; Proposed Surface Management of Natural Gas Resource Development on Jicarilla Ranger District, Carson National Forest, Rio Arriba County, NM

AGENCY: Forest Service, USDA.

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

SUMMARY: The Carson National Forest, Jicarilla Ranger District is preparing an environmental impact statement (EIS) on a proposal to amend the Forest's Land and Resource Management Plan (hereafter called Forest Plan) to incorporate standards and guidelines for surface management of natural gas resource development on the Jicarilla Ranger District. The proposal would also determine the availability of all unleased National Forest System lands on the Jicarilla Ranger District (4,385 acres) and, if determined available for leasing, add any needed surface protection stipulations to be forwarded to the Bureau of Land Management (BLM) for future lease sales. Once a decision is made to amend the Forest Plan, the standards and guidelines in that decision would remain in effect until the Forest Plan is revised. The Carson National Forest is scheduled to begin a scheduled revision process in 2007 for completion by 2010.

Ninety-seven percent of the Jicarilla Ranger District of the Carson National Forest is currently leased. Most of the

leases were issued between 1950 and 1970, prior to the passage of NEPA. Over 500 gas wells, with hundreds of miles of associated access roads, pipelines, compressor stations and other facilities currently exist on the District. Anticipated future development over the next 20 years on the District has been forecast to be around 700 more new wells. There is a need for an evaluation and determination of how to facilitate the orderly development of energy resources in the area, while minimizing disturbance to surface resources and uses. A comprehensive cumulative effects analysis that considers surface resource concerns of oil and gas development, such as impacts to wildlife, recreation, cultural resources and water quality, would provide information needed to establish new standards and guidelines in the Carson Forest Plan for management of oil and gas development on the Jicarilla Ranger District.

DATES: The Forest Service is asking that comments on the proposed action (scoping) be received by September 9, 2002. It is estimated that the draft EIS will be completed and distributed by February 2003. A 45-day comment period will follow the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The final EIS and record of decision are estimated to be released in October 2003.

ADDRESSES: The draft and final EIS will be available upon request from the Carson Forest Supervisor's Office, Attn: Lands and Minerals, 208 Cruz Alta Road, Taos, NM 87571. Comments related to the draft EIS can be sent to the Forest Supervisor, Attn: Jicarilla Gas Development EIS at the same address.

Responsible Official: The Forest Supervisor, Carson National Forest, is the responsible official and will decide whether or not: (1) 4,385 unleased acres scattered throughout the Jicarilla Ranger District would be made available for lease, and if so under what conditions; (2) the Forest Plan should be amended to provide for standards and guidelines (stipulations) for the issuance of any new leases that may result from the expiration, termination, or relinquishment of currently leased National Forest System lands; (3) the Forest Plan should be amended to provide standards and guidelines (conditions of approval) for approving development activities on currently leased National Forest System lands, if so what would they be and where would they be applied (4) monitoring is necessary, if so what type of monitoring.

FOR FURTHER INFORMATION CONTACT: Assistant Recreation, Lands and Minerals Staff Officer, Carson Forest Supervisor's Office (505) 758–6272.

SUPPLEMENTARY INFORMATION: The Forest Service is planning to amend the Carson Forest Plan to include new standards and guidelines for surface management of gas development on the Jicarilla Ranger District and to determine the availability of all unleased National Forest System lands on the Jicarilla Ranger District and if determined available for leasing, add any needed surface protection stipulations to be forwarded to the BLM for future lease sales.

Reasonable Foreseeable Development Scenario

In 2001, the BLM commissioned a study conducted by New Mexico Institute of Mining and Technology, with input from oil and gas industry representatives, to identify reasonable foreseeable development of oil and gas in the New Mexico portion of the San Juan Basin. This study resulted in a Reasonable Foreseeable Development Scenario (RFDS), which forms the basis for projected oil and gas development in the San Juan Basin over the next 20 years. The environmental analysis will address the cumulative effects of the RFDS. An RFDS is the prediction of the type and amount of oil and gas activity that would occur in a given area. The prediction is based on geologic and engineering factors, past history of drilling, and well spacing and density according to state regulations. The purpose of the RFDS is to provide a reasonable projection of the expected demand for development.

Details of the Proposed Action

Jicarilla Ranger District (except Special Areas—Bancos, Fierro, La Jara, Valencia and Highway 64)

In order to ensure access is available to reach gas resources, meet the energy needs of the Nation, sustain the productivity of the land for other uses, support biodiversity and maintain long-term health of the ecosystems on the Jicarilla Ranger District, the Forest Service proposes to include standards and guidelines in the Carson Forest Plan for the Jicarilla Ranger District (except Bancos, Fierro, La Jara, Valencia and Highway 64 Special Areas, which are described separately below). These proposed standards and guidelines would:

—Maintain a total road (open and gated) density of not more than 3 miles/mi^2 averaged over a 4 mi^2 area;
—Not exceed 50 acres averaged over a 4 mi^2 area of total surface disturbance (other than roads) resulting from gas development activities (past, present and future);
—Locate collector pipelines (tie-ins) along roads;
—Not allow well pad construction on slopes greater than 20 percent, with cuts over 15 feet, except when other resource needs indicate;
—Minimize new roads crossing slopes greater than 40 percent and ensure maximum grades of 8 percent (except on pitch grades not exceeding 300 feet in length and 10 percent in grade). Require an engineering design to support road construction on slopes greater than 40 percent;
—Gate all new roads over 300 feet, except when other resource needs indicate the road should be left open;
—Not allow gas field construction or rig activities to occur from November 1st to April 1st;
—Exclude well pad construction and minimize road crossings in riparian areas;
—Not see or hear gas development structures and activities from designated recreation sites;
—Not exceed a decibel level of 48.6 in all noise sensitive areas as established in the Noise Policy proposed by the BLM and require noise abatement measures on all new facilities throughout the Jicarilla Ranger District.

Bancos Canyon

The Forest Service proposes to continue to allow current leaseholders their legal access to the gas resource from the surrounding rim of Bancos Canyon. To protect unique cultural sites and the unroaded characteristics of Bancos Canyon, surface disturbing activities, such as well pads, pipelines or roads, would not be allowed or would be significantly restricted within the canyon itself. Any new leases would have a ''no surface occupancy'' stipulation.

Fierro Canyon and Mesa

The Forest Service proposes to continue to allow current leaseholders their legal access to the gas resource from the surrounding rim of Fierro Canyon. To protect the unroaded characteristics and wildlife values of Fierro Canyon, surface disturbing activities, such as well pads, pipelines or roads, would not be allowed or would be significantly restricted within the canyon itself. Any new leases for Fierro Canyon would have a ''no surface occupancy'' stipulation. The Forest Service proposes development on Fierro

Mesa would be accomplished through gated access road(s). Overall surface disturbance on the Mesa would be limited. Water would be piped to a central location either on the Mesa, behind a gate, or off the Mesa. Use of remote sensing would be implemented to minimize road use.

La Jara and Valencia Canyons

The Forest Service proposes to continue to allow current leaseholders their legal access to the gas resource from the surrounding canyon rims of La Jara or Valencia Canyons. To protect unique cultural sites, wildlife values and the unroaded characteristics of these canyons, surface disturbing activities, such as well pads, pipelines or roads, would not be allowed or would be significantly restricted within the canyons themselves. Any new leases for La Jara or Valencia canyons proposed in the future would have ''no surface occupancy'' stated in the lease.

US Highway 64 Corridor

In order to protect the unique vistas and riparian vegetation seen from the US Highway 64 corridor, the Forest Service proposes to manage the US Highway 64 Corridor with a visual quality objective of Retention. Under Retention the existing character of the landscape is retained. The level of change to the characteristic landscape is low. Management activities may be seen, but should not attract attention of the casual observer. Any changes must repeat the basic elements of form, line, color and texture found in the predominant natural features of the characteristic landscape. In order to meet this objective, future well sites would require the use of low profile facilities, tanks painted in a dark color, tree screens and topography to hide facilities. Well sites would not be permitted on ridgelines and cuts in slopes over 15 feet would be prohibited. These visual quality standards would reduce or eliminate the visual impacts of gas development along US Highway 64.

Mitigation Measures

Along with the above standards and guidelines for each area, this proposed action assumes that the site-specific Conditions of Approval would be incorporated in any approved application for permit to drill (APD) a gas well. These conditions include standard mitigation measures and best management practices, such as inventory and protection of archeological sites, stabilization of disturbed sites and road maintenance.

Preliminary Issues and Alternatives

The Forest Service has developed this proposed action to meet a purpose and need with the best information available—it is not a decision. This proposal is intended to facilitate public involvement in identifying pertinent issues, developing meaningful alternatives, and analyzing relevant effects. The intent of a NEPA analysis is to consider and disclose the effects of a proposed action and its alternatives before making a decision.

Public Involvement

Public review and comments on the proposed action will help the Forest Service identify any issues generated by the proposal and aid in the development of alternatives to be analyzed. The EIS for Surface Management of the Natural Gas Resource Development on the Jicarilla Ranger District will evaluate the effects on watersheds, vegetation, wildlife, threatened and endangered plants and animals, riparian areas, soils, air and water quality, reaching gas resources, social and economic conditions, recreation, heritage resources, noise and other concerns that may arise from public response to this notice.

In addition to sending this report to the Ranger District's mailing list and others known to be interested in gas development activities in the area, the Forest Service will be holding two open houses. No presentation will be given, but the Forest Service and others will be on hand to answer questions, provide additional information (maps, fact sheets, etc.), and give you a chance to talk one-on-one with those involved in the environmental analysis. Anyone is invited to submit written or oral comments before and during the open house. These comments will be considered in developing alternatives for the Draft EIS.

Date	Time	Place
Thursday, September 5th	3 pm–8 pm	Bloomfield Cultural Complex, 333 South First St., Bloomfield.
Friday, September 6th	3 pm–8 pm	Farmington Civic Center, 200 W. Arrington, Farmington.

The Forest Service is requesting that public concerns and comments on the proposed action be submitted to the address below by September 9, 2002: Forest Supervisor, Attn: Jicarilla Gas Development EIS, Carson National Forest, 208 Cruz Alta Rd., Taos, NM 87571.

Comments received in response to this solicitation, 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. 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 parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. 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 seven days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). 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 comment period so that substantive comments and objections are made

available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues 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 Carson National Forest has contracted with Science Applications International Corporation (SAIC–Albuquerque) to develop the environmental impact statement in cooperation with the staff from the Jicarilla Ranger District and the Forest Supervisor's Office. In addition to conducting the technical analyses and developing the documents, SAIC will assist the Forest Service with public outreach efforts.

Dated: August 5, 2002.

Martin D. Chavez Jr.,

Forest Supervisor, Carson National Forest.

[FR Doc. 02–20399 Filed 8–12–02; 8:45 am]

BILLING CODE 3410–11–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting: Public Hearing; Motiva Enterprise's Delaware City Refinery (DCR) Incident (July 17, 2001)

AGENCY: U.S. Chemical Safety and Hazard Investigation Board (CSB).

ACTION: Notice announcing Sunshine Act public hearing.

SUMMARY: The CSB is planning to hold a public hearing to review a staff report concerning an incident that occurred at Motiva Enterprise's Delaware City Refinery (DCR) on July 17, 2001. The staff will present its findings and analysis of the incident and submit its report and recommendations to the Board for approval.

DATES: The Public Hearing will be held on Wednesday, August 28, 2002 from 9 a.m. to 12 p.m. at the Wilmington/Christiana Hilton Hotel, 100 Continental Drive, Newark, DE.

PRE-REGISTRATION: The event is open to the public and there is no fee for attendance. However, attendees are strongly encouraged to pre-register, to ensure adequate seating arrangements. To pre-register, please email your name and affiliation by August 24, 2002, to *motiva@csb.gov.*

FOR FURTHER INFORMATION CONTACT: David Heller, Office of Investigations and Safety Programs, 202.261.7682 or e-mail at: *motiva@csb.gov.*

SUPPLEMENTARY INFORMATION: On July 17, 2001, an explosion occurred at Motiva Enterprise's Delaware City Refinery (DCR) in Delaware City, Delaware. Jeffrey Davis, a boilermaker with The Washington Group, a Motiva maintenance contractor, was killed, and 8 others were injured. A crew of contract workers had been repairing grating on a catwalk in an acid storage tank farm when a spark from their hot work ignited flammable vapors in one of the storage tanks. The tank separated from its floor, releasing its contents instantaneously. Other tanks in the tank farm area also released their contents. A fire burned for approximately one-half hour and sulfuric acid reached the Delaware River, resulting in significant damage to aquatic life.

Because of the serious nature of this incident, the U.S. Chemical Safety and Hazard Investigation Board (CSB) launched an investigation to determine the root and contributing causes and to issue recommendations to help prevent similar occurrences. Key issues to be addressed in the report concern: mechanical integrity, engineering management, management of change, and hot work systems.

Raymnd C. Porfiri

Deputy General Counsel.

[FR Doc. 02–20668 Filed 8–9–02; 3:07 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Extension of Waiting Period for the Final Environmental Impact Statement/Final Management Plan (FEIS/FMP) for the Proposed San Francisco Bay National Estaurine Research Reserve

AGENCY: The Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Extension of waiting period.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, is extending the 30-day waiting period for the Final Environmental Impact Statement/Management Plan (FEIS/FMP) for the proposed San Francisco Bay National Estuarine Research Reserve to August 26, 2002. The availability of the FEIS/FMP was announced on July 16, 2002 (67 FR 46637) with the waiting period ending on August 19, 2002. The time extension is due to mailing delays on the FEIS/FMP. The FEIS/FMP addresses research, monitoring, education, and resource protection needs for the proposed reserve.

If no substantive comments have been submitted to NOAA by August 26, 2002, a notice of availability of a Record of Decision will be published in the **Federal Register** and a Designation Document will be signed by the Under Secretary of NOAA and the Director of the Romberg Tiburon Center of the San Francisco State University.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie McGilvray, Chief, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA 1305 East West Highway, N/ORM5, Silver Spring, Maryland 20910, (301) 713–3155, Extension 158. Copies of the FEIS/FMP are available upon request to the Estuarine Reserves Division.

Dated: August 9, 2002.

Alan Neuschatz,

Chief Financial Officer/Chief Administrative Officer for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

[FR Doc. 02–20641 Filed 8–12–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Electronic Application for Patent Examiners—Job Application Rating System (JARS).

Form Number(s): PTO–2041.

Agency Approval Number: 0651–0042.

Type of Request: Extension of a currently approved collection.

Burden: 2,500 hours annually.

Number of Respondents: 5,000 responses per year.

Avg. Hours Per Response: Based on USPTO time and motion studies, the agency estimates that it will take the public approximately 30 minutes to gather and prepare the necessary information, and submit the electronic employment application.

Needs and Uses: The Electronic Application for Patent Examiners—Job Application Rating System (JARS) is used by the public to apply for entry-level patent examiner positions in a user-friendly process. The USPTO uses the electronic transmission of this information to review and rate applicants on-line almost instantaneously. It is also used by the USPTO to expedite the hiring process by eliminating the time used in the mail distribution process, thereby streamlining labor and reducing costs.

Affected Public: Individuals or households; farms; Federal Government, and state, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before Sepetember 12, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 2, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–20424 Filed 8–12–02; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Managed Funds Issues; Meeting

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Public Meeting.

SUMMARY: Notice is hereby given that the Commodity Futures Trading Commission (''Commission'') will hold a public roundtable meeting at which invited participants will discuss managed funds issues. Participants will be announced at a later date.

DATES: Thursday, September 19, 2002, from 10 a.m. to 12:30 p.m.

PLACE: 1155 21st Street, NW., Washington, DC. Lobby Level Hearing Room located at Room 1000. Status: Open.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Issued in Washington, DC, this 7th day of August, 2002.

By the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 02–20472 Filed 8–12–02; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–C0006]

Briggs & Stratton Corporation, a Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118–20(e). Published below is a provisionally-accepted Settlement Agreement with Briggs & Stratton Corporation, a corporation containing a civil penalty of $400,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 28, 2002.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 02–C0006 Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Ronald G. Yelenik, Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, 1351.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 8, 2002.

Todd A. Stevenson,

Secretary.

United States of America, Consumer Product Safety Commission

In the Matter of Briggs & Stratton Corporation, a corporation

[CPSC Docket No. 02–C0006]

Settlement Agreement and Order

1. This Settlement Agreement, made by and between the staff (''the staff'') of the U.S. Consumer Product Safety Commission (the ''Commission'') and Briggs & Stratton Corporation (''Briggs & Stratton'' or ''Respondent''), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''), is a settlement of the staff allegations set forth below.

The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. Briggs & Stratton is a corporation organized and existing under the laws of the State of Wisconsin with its principal corporate offices located in Wauwatosa, Wisconsin.

Staff Allegations

4. Between 1992 and 1995, Briggs & Stratton manufactured and sold nationwide approximately 133,000 series 1352 engines for use on fun karts. Between December 1994 and May 1995, Briggs & Stratton manufactured and sold approximately 29,000 series 1362 engines with vented gas caps for use on fun karts.

5. Both the series 1352 engines and the series 1362 engines with vented gas caps (''engines'') are ''consumer products'' and Respondent is a ''manufacutrer'' of ''consumer products'', which were ''distributed in commerce'' as those terms are defined in sections 3(a)(1),(4),(11) and (12) of the CPSA, 15 U.S.C. 2052(a)(1),(4),(11), and (12).

6. The engines are defective because when tipped over or inverted they spill gasoline that can result in fires. If a fun kart equipped with the subject engine(s) should overturn, fun kart riders could suffer serious burn injuries or death.

7. In early 1994, Briggs & Stratton became aware of an incident where a fun kart equipped with a series 1352 engine tipped over, spilled gasoline and caught fire.

8. Between January 1994 and sometime in 1999, Briggs & Stratton received at least eight reports of incidents, where fun karts with 1352 engines tipped over, spilled gasoline and caught fire, causing severe burn injuries to four kart riders ages 10–16.

9. In response to the fuel spillage problem manifested by the series 1352 engines, Briggs & Stratton attempted a number of design changes beginning in 1994. This included the production of the subject 1362 engines with vented gas caps from December 1994 through may 1995. These design changes failed to eliminate the gasoline spillage problem.

10. Between January 1995 and the present, Briggs & Stratton received at least nine reports of incidents, where fun karts equipped with 1362 engines with vented gas caps caught fire. No fire related injuries have been reported involving the 1362 engines.

11. In May 1995, Briggs & Stratton in an attempt to remedy the gasoline spillage problem redesigned the 1362 series engine to include a check valve in the gas tank.

12. Despite being aware of the information set forth in paragraphs 6 through 11, Briggs & Stratton did not report to the Commission about the subject engines until March 17, 1999, when it responded to an earlier request from Commission staff for information about the engines.

13. Briggs & Stratton obtained information which reasonably supported the conclusion that the engines described in paragraph 6 contained a defect which could create a substantial product hazard and created an unreasonable risk of serious injury or death, but failed to report such information to the Commission as required by sections 15(b)(2), (3) of the CPSA, 15 U.S.C. 2064(b)(2), (3).

14. Briggs & Stratton also failed to report to the Commission information about lawsuit settlements concerning the subject engines as required by section 37 of the CPSA, 15 U.S.C. 2084.

15. By failing to provide information as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), and section 37 of the CPSA, 15 U.S.C. 2084, Briggs & Stratton violated sections 19(a)(4), (11) of the CPSA, 15 U.S.C. 2068(a)(4), (11).

16. Respondent committed these failures to report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), and Respondent is subject to civil penalties under section 20 of the CPSA.

Response of Briggs & Stratton

17. Briggs & Stratton denies all of the allegations of the staff set forth in paragraphs 4–16 above.

18. Briggs & Stratton denies that the engines contain any defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death pursuant to section 15(b) of the CPSA, 15 U.S.C. 2064(b).

19. Briggs & Stratton denies that a particular model of an engine manufactured by Briggs & Stratton was the subject of at least three civil actions alleging the involvement of grievous bodily or death and resulting in a final settlement involving Briggs & Stratton or a court judgment in favor of the plaintiff within a 24-month period pursuant to section 37 of the CPSA, 15 U.S.C. 2084.

20. Respondent denies that it violated the CPSA Reporting Requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b) and section 37 of the CPSA, 15 U.S.C. 2084. Briggs & Stratton states that no other violation of law occurred warranting imposition of a civil penalty. In settling this matter, Briggs & Stratton does not admit any fault, liability or statutory or regulatory violation.

21. Briggs & Stratton further states that it designed and implemented product improvements to address the risk of gasoline spillage; it considered the reporting requirements of the CPSA and made, based on its understanding of the law, good faith judgments about reporting; and it did not knowingly violate any reporting requirements.

22. With respect to the allegations of incidents of severe burn injuries referenced in paragraph 8 above, Briggs & Stratton denies that a defect in the engines was the cause of the injuries and states that each incident involved either an alternate cause of fire or injury, misuse of the product or changes made to the product after Respondent's manufacturing of the product.

Agreement of the Parties

23. The Commission has jurisdiction over this matter and over Briggs & Stratton under the CPSA, 15 U.S.C. 2051–2084.

24. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the CPSA Reporting Requirements.

25. Briggs & Stratton agrees to pay to the order of the U.S. Treasury a civil penalty in the amount of four hundred thousand dollars ($400,000.00), in settlement of this matter, payable within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement.

26. Briggs & Stratton knowingly, voluntarily and completely waives any rights it may have in the above captioned case (i) to the issuance of a Complaint in this matter, (ii) to an administrative or judicial hearing with respect to the staff's allegations cited herein; (iii) to judicial review of other challenge or contest of the validity of the Settlement Agreement or the Commission's Order; (iv) to be a determination by the Commission as to whether a violation of sections 15(b) or 37 of the CPSA, has occurred, (v) to a statement of findings of fact and conclusions of law with regard to the staff's allegations; and (vi) to any claims under the Equal Access to Justice Act.

27. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

28. This Settlement Agreement and Order becomes effective after its final acceptance by the Commission and service upon Respondent.

29. Upon final acceptance of this Settlement Agreement by the Commission, the Commission may publicize the terms of the Settlement Agreement and Order.

30. Respondent agrees to the entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

31. This Settlement Agreement and Order is binding upon Briggs & Stratton, its parent and each of their assigns and successors.

32. This Settlement Agreement and Order fully resolves the matters set forth in paragraphs 4 through 16 above.

33. If, after the effective date hereof, any provisions of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement

and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Briggs & Stratton determine that severing the provision materially impacts the purpose of the Settlement Agreement and Order.

34. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced, and approved by the Commission.

35. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of his Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: August 7, 2002.
Briggs & Stratton Corporation.

Thomas R. Savage,

Vice President.

The Consumer Product Safety Commission.

Alan H. Schoem,

Director, Office of Compliance.

Eric L. Stone,

Director Legal Division, Office of Compliance.

Dated: August 7, 2002.

Ronald G. Yelenick,

Trial Attorney, Legal Division, Office of Compliance.

United States of America Consumer Product Safety Commission

In the Matter of Briggs & Stratton Corporation, a corporation

[CPSC Docket No. 02–C0006]

Order

Upon consideration of the Settlement Agreement between Respondent Briggs & Stratton Corporation, a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Briggs & Stratton Corporation, and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted, and it is

Further Ordered, that Briggs & Stratton shall pay to the order of the U.S. Treasury a civil penalty in the amount of four hundred thousand dollars ($400,000.00), payable within twenty (20) calendar days after service of this Final Order upon Briggs & Stratton Corporation.

Provisionally accepted and Provisional Order issued on the 8th day of August, 2002.

By Order of the Commission.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–20496 Filed 8–12–02; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for Donation of the Patrol Combatant ex-CANON (PG 90)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability for donation, under the authority of 10 U.S.C. section 7306, of the patrol combatant ex-CANON (PG 90) located at the NAVSEA Inactive Ships On-Site Maintenance Office (NISMO), Philadelphia, PA. Eligible recipients include: (1) Any state, commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any organization incorporated as a non-profit entity under section 501 of the Internal Revenue Code. The transfer of a ship for donation under 10 U.S.C 7306 shall be made at no cost to the United States Government. The donee will be required to maintain the ship as a static museum/memorial in a condition that is satisfactory to the Secretary of the Navy. Prospective donees must submit a comprehensive application that addresses the significant financial, technical, environmental and curatorial responsibilities associated with donated Navy ships. Further application information can be found on the Navy Ship Donation Program website at *www.navsea.navy.mil/ndp*.

Other ships that are currently available for donation include:

—Destroyer ex-CONOLLY (DD 979), Philadelphia, PA.
—Cruiser ex-STERETT (CG 31), Benecia, CA.
—Guided Missile Frigate ex-OLIVER HAZARD PERRY (FFG 7), Philadelphia, PA.
—Heavy Cruiser ex-DES MOINES (CA 134), Philadelphia, PA.
—Destroyer ex-FORREST SHERMAN (DD 931), Philadelphia, PA

FOR FURTHER INFORMATION CONTACT: Commander, Naval Sea Systems Command, ATTN: Ms. Gloria Carvalho (PMS 333G), 1333 Isaac Hull Ave SE Stop 2701, Washington Navy Yard, DC 20376–2701, telephone number (202) 781–0485.

Dated: August 1, 2002.

R. E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, , U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–20423 Filed 8–12–02; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF ENERGY

[DE–PS07–02ID14308]

Glass Industry of the Future

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of Competitive Financial Assistance Solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research, development and demonstration of innovative glass technologies that will reduce energy consumption, reduce environmental impacts, and enhance economic competitiveness in the U.S. glass industry.

The proposed research and development (R&D) projects must address priorities as identified in the Glass Industry Technology Roadmap *(http://www.oit.doe.gov/glass/pdfs/glass2002roadmap.pdf).* Proposals must address at least one of the four priority areas in the Roadmap: Production Efficiency, Energy Efficiency, Environmental Performance and Innovative Uses, and must have a high-energy efficiency component.

DATES: The issuance date of Solicitation Number DE–PS07–02ID14308 will be on or about August 5, 2002. The application, SF 424, technical proposal, and the Energy Savings Estimator Impact Table, must have an IIPS transmission time stamp of not later than 3 p.m. MST on Friday, September 27, 2002. Late applications will not be considered.

ADDRESSES: Completed applications are required to be submitted via the U.S. Department of Energy Industry Interactive Procurement System (IIPS) at the following URL: *http://e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Dahl, Contract Specialist at *dahlee@id.doe.gov*, facsimile at (208) 526–5548, or by telephone at (208) 526–7214.

SUPPLEMENTARY INFORMATION: DOE anticipates making approximately 4 to 6

cooperative agreement awards under this solicitation with a maximum estimated DOE funding of $350,000 per year for each cooperative agreement up to a three-year period, subject to the availability of funds. Approximately $5 million in federal funds are expected to be available to fund selected research projects over the three-year period. A minimum 50% non-federal cost share is required for research and development projects over the life of the project. The solicitation is available in its full text via the Internet at the following address: *http://e-center.doe.gov.* The statutory authority for this program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086, Conservation Research and Development.

Issued in Idaho Falls on August 5, 2002.

R. J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 02–20458 Filed 8–12–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 02–25; Plasma Physics Junior Faculty Development Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for support under its Plasma Physics Junior Faculty Development Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical plasma physics research and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of the individual research programs of exceptionally talented scientists and engineers early in their careers.

DATES: To permit timely consideration for awards in Fiscal Year 2003, formal applications in response to this notice must be received on or before January 7, 2003.

ADDRESSES: We encourage you to submit formal applications in response to this solicitation electronically through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/.IIPS* provides for the posting of solicitations and receipt of applications in a paperless environment via the World Wide Web. Applications must be submitted through IIPS in PDF format by an authorized institutional business official. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit the application through IIPS, formal applications may be sent to: Director, Grants and Contracts Division, Office of Science, SC–64/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–1290. ATTN: Program Notice 02–25. When submitting applications by U.S. Postal Service Express, any commercial Mail delivery service, or when hand carried by the applicant the following address must be used: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 02–25.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald McKnight, U.S. Department of Energy, Office of Fusion Energy Sciences, Science Division, SC–55/Germantown Building, 1000 Independence Avenue, SW, Washington, DC 20585–1290. Telephone: (301) 903–4597. E-mail: *ronald.mcknight@science.doe.gov.*

SUPPLEMENTARY INFORMATION: The Plasma Physics Junior Faculty Development Program was started in Fiscal Year 1997. A principal goal of this program is to identify exceptionally talented plasma faculty members early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is, therefore, restricted to tenure-track regular academic faculty investigators who are conducting experimental or theoretical plasma physics research. Those Junior Faculty members presently holding career development awards will not be considered under this announcement.

Applications from Junior Faculty involved in any areas of plasma physics research, not only magnetic fusion, are welcomed and encouraged. Emphasis is to be placed on basic plasma science research. For applications to be considered for funding, certification of the status of the applicant as a tenure-track regular academic faculty member by the head of the applicant's academic department or other university/college certifying official will be required before the grant is awarded. Awards made under this program will help to maintain the vitality of university plasma physics research and assure continued excellence in the teaching of plasma physics and related disciplines.

It is anticipated that annual funding levels up to $150,000 per award may be made available for grants under this notice during Fiscal Year 2003, contingent upon the availability of appropriated funds. Funding for equipment above this level will be considered on a case-by-case basis. The number of awards during Fiscal Year 2003 will depend on the number of meritorious applications and the availability of appropriated funds. Multiple year funding of grant awards is expected, with funding provided on an annual basis subject to availability of funds. The usual duration of these grants is three years and they will not normally be renewed after the project period is completed. It is anticipated that at the end of the grant period, grantees will submit new grant applications to continue their research to the Department of Energy or other Federal funding agencies. For the Office of Science, these applications should follow the usual application process. Applications will be subjected to scientific merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of applicant's personnel and adequacy of proposed resources; and

4. Reasonableness and appropriateness of the proposed budget.

An additional review criteria will address educational aspects of the proposed work including the involvement of graduate and undergraduate students. These aspects should be discussed in the application.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605 which is available on the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605).

Issued in Washington, DC on August 5, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–20457 Filed 8–12–02; 8:45 am]

BILLING CODE 6450–02–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–854–003, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

August 7, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Florida Power & Light Company

[Docket No. ER02–854–003]

Take notice that on August 1, 2002, Florida Power & Light Company (FPL) filed, pursuant to the Federal Energy Regulatory Commission's Order issued on July 23, 2002 in Docket Nos. ER02–854–001 and ER02–854–002, a compliance filing making the required changes to the Interconnection & Operation Agreement between FPL and Blue Heron Energy Center, LLC.

Comment Date: August 22, 2002.

2. American Transmission Company LLC

[Docket Nos. ER02–1870–001, ER02–1871–001, ER02–1872–001, ER02–1873–001, ER02–1874–001, ER02–1875–001, ER02–1876–001, ER02–1877–001, ER02–1878–001, ER02–1879–001, ER02–1880–001, ER02–1881–001, ER02–1882–001, and ER02–1883–001]

Take notice that on August 1, 2002, American Transmission Company LLC (ATCLLC) tendered for filing fourteen Distribution-Transmission Interconnection Agreements reformatted in accordance with Order No. 614 in compliance with the Commission's July 2, 2002 Letter Order.

Comment Date: August 22, 2002.

3. Southern Company Services, Inc.

[Docket No. ER02–2219–001]

Take notice that on August 1, 2002, Southern Company Services, Inc. (SCS), acting on behalf of Georgia Power Company (GPC) and Savannah Electric and Power Company (Savannah), filed with the Federal Energy Regulatory Commission (Commission) a supplement to its July 1, 2002 filing of a letter agreement (Agreement) between Southern Power Company, GPC and Savannah that authorizes Georgia Power and Savannah to commence, and Southern Power to pay for costs associated with activities to interconnect Southern Power's generating facility in Effingham County, Georgia. The supplement consists of a letter agreement extending the term of the Agreement.

Comment Date: August 22, 2002.

4. Arizona Public Service Company

[Docket No. ER02–2328–001]

Take notice that on August 1, 2002, Arizona Public Service Company (APS) tendered for filing a correction to the two Service Agreements with Public Service Company of New Mexico, Wholesale Power Marketing under APS'' Open Access Transmission Tariff filed in the above referenced docket.

A copy of this filing has been served on Public Service Company of New Mexico, Wholesale Power Marketing, New Mexico Public Regulation Commission, and the Arizona Corporation Commission.

Comment Date: August 22, 2002.

5. Accent Energy Inc.

[Docket No. ER02–2399–000]

Take notice that on July 31, 2002, Accent Energy Inc. (Accent) petitioned the Commission for acceptance of Accent Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Accent is a Delaware corporation with its principal place of business in Dublin, Ohio. Accent is involved in natural gas marketing and the marketing of electricity. Accent proposes to act as a retail energy marketer, selling natural gas and power to commercial and industrial customers. However, from time to time it may be deemed to act as a power marketer, purchasing electricity and reselling it to wholesale customers through its supply agreements with its wholesale suppliers. Accent is not in the business of generating or transmitting electric power.

Comment Date: August 21, 2002.

6. Southern California Water Company

[Docket No. ER02–2400–000]

Take notice that on July 31, 2002, Southern California Water Company (SCWC) tendered for filing with the Federal Energy Regulatory Commission an application for market-based rate authority under which SCWC will engage in wholesale electric power and energy transactions at market-based rates. Copies of this filing were served upon the Public Utilities Commission of the State of California.

Comment Date: August 21, 2002.

7. Duke Energy Corporation

[Docket No. ER02–2401–000]

Take notice that on July 31, 2002, Duke Energy Corporation (Duke) on behalf of Duke Electric Transmission (Duke ET), tendered for filing Service Agreement for Network Integration Transmission Service (NITSA) between Duke ET and the Commissioners of Public Works of the City of Greenwood, South Carolina under Duke's Open Access Transmission Tariff.

Duke seeks an effective date for the NITSA of July 1, 2002.

Comment Date: August 21, 2002.

8. Great Bay Power Corporation

[Docket No. ER02–2402–000]

Take notice that on July 31, 2002, Great Bay Power Corporation (Great Bay) filed with the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13 to amend its Purchased Power Agreement executed in 1993 between Great Bay and Unitil Power Corp. (UPC) (1993 PPA) as provided in the Amended and Restated Purchased Power Agreement, along with the Agreement to Amend, entered into by Great Bay and UPC (Amended PPA). The amendments to the 1993 PPA are a result of Great Bay's intention to sell its interest in the Seabrook Nuclear Power Station (Seabrook). Great Bay requests an effective date of the earlier of the Seabrook transaction's closing date or December 1, 2002.

Comment Date: August 21, 2002.

9. Commonwealth Edison Company

[Docket No. ER02–2403–000]

Take notice that on July 31, 2002, Commonwealth Edison Company (ComEd) submitted for filing an executed Network Service and Network Operating Agreement (Service Agreement) between ComEd and Ameren Energy Marketing (Ameren), two executed agreements for dynamic scheduling of transmission service (Scheduling Agreements), and an agreement for short-term firm point-to-point transmission service (Transmission Agreement) between ComEd and Exelon Generation Company, LLC, (EXGN) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of May 20, 2002 for the Service Agreement, an

effective date of July 1, 2002 for the first of the Scheduling Agreements and the Transmission Agreement, and an effective date of July 8, 2002 for the second of the Scheduling Agreements, and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Ameren, EXGN and the Illinois Commerce Commission.

Comment Date: August 21, 2002.

10. WPS Energy Services, Inc.

[Docket No. ER02–2404–000]

Take notice that on July 31, 2002, WPS Energy Services, Inc. (ESI) filed a brokering and dispatch agreement between ESI and WPS Empire State, Inc. (Empire) (the Agreement). ESI requests waiver of the Federal Energy Regulatory Commission's notice of filing requirements to permit the Agreement to become effective on May 31, 2002.

A copy of the filing was served upon Empire.

Comment Date: August 21, 2002.

11. California Independent System Operator Corporation

[Docket No. ER02–2405–000]

Take notice that on July 31, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and TXU Energy Trading Company LP for acceptance by the Federal Energy Regulatory Commission.

The ISO states that this filing has been served on TXU Energy Trading Company LP and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of July 19, 2002.

Comment Date: August 21, 2002.

12. Conectiv

[Docket No. ER02–2406–000]

Take notice that on July 31, 2002, Conectiv, on behalf of Atlantic City Electric Company (ACE), tendered for filing a Notice of Cancellation and two revised cover sheets to cancel two interconnection agreements between ACE and NRG Energy, Inc. (NRG) on file as Service Agreement No. 481 and Service Agreement No. 482, respectively, under PJM Interconnection, L.L.C.'s (PJM) open access transmission tariff, FERC Electric Tariff, Third Revised Volume No. 1.

Conectiv initially filed the two interconnection agreements in anticipation of a sale by ACE to NRG of two electrical generating stations that was terminated after the filing of the two interconnection agreements with the Commission. Conectiv respectfully requests that the Commission waive its notice requirements and allow the Notice of Cancellation and the revised cover sheets to become effective as of September 1, 2000.

Copies of the filing were served upon NRG, the Maryland Public Service Commission, the Delaware Public Service Commission, the New Jersey Board of Public Utilities, the Virginia State Corporation Commission, the Pennsylvania Public Utility Commission and PJM.

Comment Date: August 21, 2002.

13. Maclaren Energy, Inc.

[Docket No. ER02–2407–000]

Take notice that on August 1, 2002, Maclaren Energy, Inc. (Maclaren) tendered for filing with the Federal Energy Regulatory Commission (Commission) a transmittal letter notifying the Commission that Maclaren legally changed its name to Brascan Energy Marketing Inc. on June 27, 2002. The filing also proposes a revision to Maclaren's tariff to add the language required by the Commission in its November 20, 2001 order in Docket No. EL01–118–000 to ensure that Maclaren's rates remain just and reasonable.

Comment Date: August 22, 2002.

14. Lower Mount Bethel Energy, LLC

[Docket No. ER02–2408–000]

Take notice that on August 1, 2002, Lower Mount Bethel Energy, LLC filed with the Federal Energy Regulatory Commission (Commission) an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates.

Comment Date: August 22, 2002.

15. California Independent System Operator Corporation

[Docket No. ER02–2409–000]

Take notice that on August 2, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Public Service Company of New Mexico for acceptance by the Commission.

The ISO states that this filing has been served on Public Service Company of New Mexico and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of July 19, 2002.

Comment Date: August 23, 2002.

16. California Independent System Operator Corporation

[Docket No. ER02–2410–000]

Take notice that on August 2, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Midway Sunset Cogeneration Company for acceptance by the Commission.

The ISO states that this filing has been served on Midway Sunset Cogeneration Company and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of July 22, 2002.

Comment Date: August 23, 2002.

17. Southern California Edison Company

[Docket No. ER02–2411–000]

Take notice that on August 2, 2002, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the City of Corona (Corona). The Letter Agreement specifies the terms and conditions under which SCE will commence performance of the engineering, design, procurement, and preparation of specifications necessary for the required interconnection facilities and any required system upgrades to commence Distribution Service to Corona by Corona's proposed in-service date of December 1, 2002.

SCE respectfully requests that the Letter Agreement become effective on July 24, 2002. Copies of this filing were served upon the Public Utilities Commission of the State of California and Corona.

Comment Date: August 23, 2002.

18. PowerSól Energy Marketing, LLC

[Docket No. ER02–2413–000]

Take notice that on August 1, 2002, PowerSól Energy Marketing, LLC (PowerSól) petitioned the Commission for acceptance of PowerSól Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

PowerSól intends to engage in wholesale electric power and energy purchases and sales as a marketer. PowerSól is not in the business of generating or transmitting electric power. PowerSól is a wholly-owned subsidiary of PowerSól Group, LP, which, through its affiliates, engaged in public affairs, public relations, financial services and real estate.

Comment Date: August 23, 2002.

19. Florida Power & Light Company

[Docket No. ER02–2414–000]

Take notice that on August 2, 2002, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission an unexecuted Interconnection and Operation Agreement between FPL and Duke Energy Fort Pierce, LLC (Duke) that sets forth the terms and conditions governing the interconnection between Duke's generating project and FPL's transmission system. A copy of this filing has been served on Duke and the Florida Public Service Commission.

Comment Date: August 23, 2002.

20. PJM Interconnection, L.L.C.

[Docket No. ER02–2415–000]

Take notice that on August 2, 2002, PJM Interconnection, L.L.C. (PJM), submitted amendments to the PJM Open Access Transmission Tariff to add provisions under which generators that benefit from transmission capability created by facilities or upgrades that were built to accommodate, and at the expense of, generators previously interconnected with the transmission system will be responsible for a proportional share of the costs of the previous facilities or upgrades, provided that the generator that originally paid for the relevant facilities or upgrades agrees to relinquish Incremental FTRs proportional to the cost responsibility assigned to the subsequent generator.

Copies of this filing have been served on all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: August 23, 2002.

21. PJM Interconnection, L.L.C.

[Docket No. ER02–2416–000]

Take notice that on August 2, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement between PJM and Sweetheart Cup Company, Inc. PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date agreed to by the parties.

Copies of this filing were served upon each of the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 23, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–20406 Filed 8–12–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7257–9]

Agency Information Collection Activities: Continuing Collection; Comment Request; National Health Protection Survey of Beaches

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: National Health Protection Survey of Beaches, EPA ICR Number 1814.02, OMB Control Number 2040–0189, expiration date 01/31/2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 15, 2002.

ADDRESSES: Send or deliver comments to the following addresses: Mr. Rick Hoffmann, Office of Water, Office of Science and Technology, Standards and Health Protection Division (4305T), 1200 Pennsylvania Avenue, Washington, DC 20460. Location for Hand Delivery: EPA West (Connecting Wing, Room 5233LL, 1301 Constitution Avenue, NW., Washington, DC. Interested persons may obtain a copy of the ICR without charge by contacting EPA staff listed in the section below.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Hoffmann at EPA, (202) 566–0388, by email at *hoffmann.rick@epa.gov*, or facsimile at 202–566–0409. Or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1814.02.

SUPPLEMENTARY INFORMATION:

Title: National Health Protection Survey of Beaches (OMB Control No. 2040–0189; EPA ICR No. 1814.02; expiring 01/31/03).

Abstract: Bacterial and other microbiological contaminants continue to pose potentially serious human health problems for the Nation's recreational waters, including bathing beaches. These adverse effects have been one of EPA's long-standing concerns. They are directly related to such Clean Water Act responsibilities as water quality standards and surface water quality, and to the Agency's efforts to ensure that the waters of the United States are ''fishable'' and ''swimmable.'' In response to this concern, EPA initiated its annual National Health Protection Survey of Beaches (Beach Survey) starting in 1997. This voluntary nationwide survey collects, and makes available to the public, information related to beach water quality including: monitoring agency and organization, monitoring and public notification procedures and responsibilities; water quality standards; advisories and closings; and reasons for advisories and closings.

Currently, all beach information collected by EPA is obtained through the Beach Survey. However, EPA plans to significantly reduce the amount of information collected through the survey and instead obtain this information through grants to state and local governments awarded under the authority of the Beaches Environmental Assessment and Coastal Health (BEACH) Act. Since the information will be collected either through the Beach Survey or BEACH Act grants (but not both), there will be no duplication of effort and the net burden will be the same.

An Information Collection Request for the BEACH Act grant program has been approved by the Office of Management and Budget (EPA ICR Number 2048.01, OMB Control Number 2040–0244). Congress passed the BEACH Act in October 2000. The BEACH Act amended

the Clean Water Act by adding section 406 ''Coastal Recreation Water Monitoring and Notification.'' Section 406(b) authorizes EPA to make grants to States and local governments to develop and implement programs for monitoring and public notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public, if the State or local government satisfies the requirements of the BEACH Act. Several of these requirements require a grant awardee to collect and submit information to EPA as a condition of receiving a grant. Section 406(b) requires a grant awardee to identify the factors that the awardee uses to prioritize use of the grant funds, and a list of waters that will be monitored using grant funds. Section 406(b) also requires that a grant awardee's program be consistent with the grant program performance criteria established by EPA under section 406(a). EPA published these program performance criteria on July 19, 2002 (**Federal Register:** July 19, 2002 (67 FR 47540)). EPA needs information from the grant awardee to determine if the monitoring and notification programs are consistent with these criteria. Section 406(b) of the Clean Water Act also requires a grant awardee to submit a report to EPA that describes the data collected as part of a monitoring and notification program, and the actions taken to notify the public when water quality standards are exceeded. Section 406(c) of the Clean Water Act requires a grant awardee to identify lists of coastal recreation waters, processes for States to delegate to local governments the responsibility for implementing a monitoring and notification program, and the content of the monitoring and notification program. The information is required of States and local governments that seek to obtain BEACH Act funding. It allows EPA to properly review State and local governments' monitoring and notification programs to determine if they are eligible for BEACH Act grant funding. This information also enables EPA to fulfill its obligations to make this information available to the public as required by sections 406(e) and (g).

This BEACH Act requirement will greatly reduce the amount of information collected by the National Health Protection Survey of Beaches. However, there is still a need to conduct a limited survey. EPA proposes to send its voluntary survey to those agencies that are not eligible for BEACH grants. For example, agencies responsible for monitoring inland recreational waters are not eligible to receive grants under the BEACH Act. EPA proposes to continue collecting information about these inland waters because they are an important concern. For example, the National Health Protection Survey of Beaches for the 2001 swim season received information about more than 600 inland beaches. Approximately 23% of these beaches were under advisory or closed at least once during the swim season due to the potential risk of bacteriological contamination. Therefore, water quality at inland bathing beach areas remains an important concern to EPA. If an eligible state decides not to apply for a grant, EPA would send its voluntary surveys to appropriate agencies. EPA will ensure that these surveys are not sent to agencies receiving beach grants.

The annual Beach Survey will be sent to appropriate environmental health officials from State, tribal, county, and city agencies, as well as representatives from various interest groups. It will obtain and verify information on the location and condition of swimming beaches and the agencies and persons responsible for maintaining and issuing advisories or closings for those beaches. Responses to the questionnaire will be gathered either on paper questionnaires or electronically via the Internet.

EPA will assemble the information into an electronic database and that can be readily analyzed and shared with responsible parties (*e.g.*, EPA program and regional offices, other federal, state, tribal, county, and city agencies), as well as the public. The nationwide collection of information is conducted annually, with an average estimated number of respondents of approximately 300 agencies in the first year, declining to an estimated 50 agencies in the third year. The estimated annual cost for the survey per respondent is anticipated to decrease each year, since respondents will only be requested to provide information that has changed during the year.

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

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 2.4 hours per response. For the first year of the survey covered by this Information Collection Request it is estimated that 300 surveys will be completed. During the second and third years of the survey covered by this ICR it is estimated that 50 surveys will be received each year. 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.

This burden estimate assumes that there will be a major drop in current participants due to reporting of data through BEACH Act grants. However. there may be a very gradual increase in the inland, freshwater beach participants as interest increases in the survey.

Respondents/Affected Entities: Entities potentially affected by this action are State, County, City, and Tribal representative with responsibilities for assessing the impact of water contaminated by microbiological pollutants on persons using beaches and related recreational waters.

Comments: You may submit comments by mail, e-mail, or delivered by hand to the addresses shown in the **ADDRESSES** section of this notice.

Dated: August 2, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 02–20450 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7258–1]

Agency Information Collection Activities: Continuing Collection; Comment Request; General Hazardous Waste Facility Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): General Hazardous Waste Facility Standards, EPA ICR # 1571.07, OMB Control Number 2050–0120, expires December 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 15, 2002.

ADDRESSES: Comments may be submitted by mail, through hand delivery/courier, or electronically. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

The mailing address, referencing Docket ID No. RCRA–1999–0027, is: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001. Hand deliveries of comments should be made to the Arlington, Virginia address below. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov.* Comments in electronic format should also be identified by the Docket ID No. RCRA–1999–0027. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington DC 20460–001.

Hand deliveries must be brought to the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: David Eberly by phone at (703) 308–8645, by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001, or by e-mail at *eberly.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. RCRA–1999–0027. The official public docket consists of the documents specifically referenced in the ICR, any public comments received, and other information related to this ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the RCRA Information Center (see **ADDRESSES** above). This Docket Facility is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays. It is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies are $0.15/page

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, 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 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 EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic 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 A.1 above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in 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 EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by 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. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments in formulating a final decision.

1. *Electronically.* If you submit an electronic comment as prescribed

below, 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 EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that 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 EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is 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 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. RCRA–1999–0027. The system is an ''anonymous access'' system, which means 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 *rcra-docket@epa.gov,* Attention Docket ID No. RCRA–1999–0027. In contrast to EPA's electronic public docket, 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 EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in 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 **ADDRESSES.** 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 two copies of their comments, referencing Docket ID No. RCRA–1999–0027, to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue NW., Washington, DC 20460–001.

3. *By Hand Delivery or Courier.* Deliver your comments to: RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA, Attention Docket ID No. RCRA–1999–0027. Such deliveries are only accepted during the Docket's normal hours of operation, from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to: RCRA CBI Document Control Officer, Office of Solid Waste (5303W), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington DC 20460–001, Attention Docket ID No. RCRA–1999–0027. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is 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 docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information. In particular, for this ICR, EPA is soliciting information on the estimates for performing waste analyses as required in 40 CFR 264.13(a)(1) and 40 CFR 265.13(a)(1).

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Affected entities: Entities potentially affected by this action are owners and operators of hazardous waste treatment, storage, and disposal facilities.

Title: General Hazardous Waste Facility Standards, EPA ICR # 1571.07, OMB Control Number 2050–0120, expires on December 31, 2002.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the U.S. Environmental Protection Agency (EPA) develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs) as may be necessary to protect human health and the environment. Subsections 3004(a)(1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

- Maintaining records of all hazardous wastes identified or listed under subtitle C that are treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
- Operating methods, techniques, and practices for treatment, storage, or disposal of hazardous waste;
- Location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
- Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and

• Maintaining or operating such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

The regulations implementing these requirements are codified in the *Code of Federal Regulations* (CFR) Title 40, parts 264 and 265. The collection of this information enables EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of Section 3004(a) of RCRA. 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.

Burden Statement: This proposed ICR is an estimate of the total respondent burden for all activities related to general facility operating requirements, record keeping requirements, contingency plan and emergency reporting requirements, releases from solid waste management units, closure/post-closure requirements, financial requirements, corrective action management unit requirements, and conditions applicable to all permits.

The total burden to respondents as estimated in the proposed ICR for ''General Facility Standards (#1571.07)'' is 719,059 hours per year, at a cost of $45,380,950 per year. This estimate was based on owners and operators of hazardous waste management facilities complying with the information collection requirements set forth in 40 CFR parts 264 and 265, subparts B–H and by using an average hourly respondent labor cost (including overhead) of $108.00 for legal staff, $77.00 for managerial staff, $57.00 for technical staff, and $29.00 for clerical staff. EPA estimates the total number of respondents per year to be 2,724, which includes both permitted and interim status facilities. The number of respondents varies depending upon the category of each facility and the required activity.

The annual public reporting burden and record keeping burden for this collection of information is estimated to average 319 hours per respondent.

For general facility operating standards, there is no associated reporting. The record keeping burden for general facility operating standards is estimated to average 119 hours per respondent per year. This estimate includes time for reading the regulations, preparing and submitting notices, collecting and documenting waste analysis data, and developing a waste analysis plan, inspection schedule, personnel training schedule, and construction quality assurance plan.

For operating record requirements, the record keeping burden is estimated to average 131 hours per year. This burden includes time to collect and file information in the operating record. There is no associated reporting burden for these requirements.

For contingency plan and emergency procedure requirements, there is no associated reporting burden. The record keeping burden is estimated to average one hour per respondent per year.

For requirements covering releases from solid waste management units, the public reporting burden is estimated to average 1 hour per respondent per year. This estimate includes time to read the regulations and prepare and submit demonstrations. There is no associated record keeping burden for these requirements.

For closure and post-closure requirements, the public reporting burden is estimated to average 45 hours per respondent per year. This estimate includes time to read the regulations; prepare and submit plans, notices, demonstrations, certifications, and records; and make modifications to plans. The record keeping burden is estimated to average 1 hour per respondent per year.

For financial requirements, the public reporting burden is estimated to average 16 hours per respondent per year. This estimate includes time to read the regulations and prepare and submit financial and liability assurance documentation. There is no associated record keeping burden for these requirements.

For permit condition requirements, the public reporting burden is estimated to average 6 hours per respondent per year. This estimate includes time to read the regulations, and prepare and submit information requested by EPA, required by the permit, or required as a result of an incident that occurs at the facility. There is no associated record keeping burden for these requirements.

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

Dated: August 2, 2002.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–20453 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7252–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; 2003 Hazardous Waste (Biennial) Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: We are announcing our plan to submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB): The 2003 Hazardous Waste Report, also known as the Biennial Report. Before submitting this ICR to OMB for review and approval, we are asking for comments on the information collection.

DATES: Comments must be submitted on or before October 15, 2002.

ADDRESSES: EPA, Office of Solid Waste (5302W), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Burchard (703) 308–8450, fax: (703) 308–8433, *burchard.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are those which generate, treat, store, or dispose of hazardous waste.

Title: ''The 2003 Hazardous Waste Report (Biennial Report)'' EPA ICR No.0976.10, OMB Control No. 2050–0024.

This ICR renews an on-going information collection from hazardous waste generators and treatment, storage, or disposal facilities. This collection is done on a two year cycle, and is required by Sections 3002 and 3004 of the Resource Conservation and Recovery Act (RCRA). The information collected is collected via a mechanism known as the Biennial Report.

The Biennial Report provides information on the quantities, type, and management of hazardous waste in the

United States. The Biennial Report data are used by EPA and the states to understand available capacity to treat, store, dispose, and recycle hazardous wastes; to provide information for analysis of trends in waste generation, waste treatment, recycling, and source reduction; to target facility inspections; and to understand how much waste a state receives from out of state or sends out of state.

Data are collected from respondents and entered into an electronic database by state and EPA Regions. States coordinate with EPA Regions and Headquarters to supply EPA with the data. These data are maintained in RCRAInfo, a database residing on centrally managed servers at the Agency's National Computing Center (accessible through the Envirofacts web page: *www.epa.gov/enviro).*

Once an initial version of the national database is compiled, EPA Headquarters coordinates a data quality review with the states and EPA Regions. This process identifies cases where the state or Region may want to confirm that data were correctly entered, and where they should contact a respondent to confirm what they reported and provide them with the opportunity to submit an updated report if the original contained errors. Following the submittal of revised data, no further changes are made to the database and it becomes the final version.

For the 2003 cycle, we plan to use most of the 2001 Biennial Report forms and instructions. There will be some small changes for 2003: eliminating the reporting of radioactive mixed waste, clarifying the explanations for some of the Source and Management codes, and providing better directions for determining which North American Industrial Classification System (NAICS) code is appropriate. We are eliminating radioactive mixed waste because the information is not used by program implementers. We plan to have the 2003 forms and instructions available to the public by the beginning of the 2003 calendar year.

Burden Statement

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

The EPA solicits comments to help us:

(i) Evaluate whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's burden estimate;

(iii) find ways to enhance the quality and utility of the information; and

(iv) minimize the burden of the information collection, such as using automated techniques.

Based on the 2001 Biennial Report ICR, EPA estimates there will be 20,300 respondents to the 2003 Biennial Report. We also estimate that Biennial Report will impose an annual burden of 195,200 hours on the states and regulated community and require the expenditure of $10,260,000.

The annual reporting burden is estimated at 17 hours per respondent, which includes time for reviewing instructions, gathering data, completing and reviewing the forms, and submitting the report. The annual record keeping requirement is estimated at 2.5 hours per respondent, which includes the time for filing and storing the Biennial Report submission for three years. Burden means the total time, effort, or financial resources expended to generate, maintain, retain, disclose or provide information.

Dated: August 6, 2002.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 02–20454 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7257–8]

Privacy Act of 1974: System of Records, Creation of a New Privacy Act System of Records

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of establishment of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of the Inspector General (OIG) is giving notice that it proposes to establish a new system of records, AutoAudit. This system of records is an automated information tracking and storage system employed in connection with OIG audits, consulting services, and evaluations commenced on or after April 8, 2002.

EFFECTIVE DATES: The proposed amendments will be effective without further notice on September 23, 2002 unless comments received require a contrary determination.

ADDRESSES: Send written comments to Gary Johnson, Acting Assistant Inspector General for Mission Systems, Office of Inspector General (2441), 1200 Pennsylvania Ave., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Acting Assistant Inspector General for Mission Systems, on (202 566–0848).

SUPPLEMENTARY INFORMATION: The OIG, pursuant to the Privacy Act of 1974, currently maintains four systems of records: (1) Investigative Files of the Office of Inspector General (EPA–40) ; (2) Personnel Security Files of the Office of Inspector General (EPA–41); (3) Inspector General's Operation and Reporting (IGOR) System Audit, Assignment, and Timesheet Files (EPA–42); and (4) Hotline Files of the Office of Inspector General (EPA–30). The notice for the first three systems of records was published on October 1, 2001 (66 FR 49947). The notice for the Hotline system of records was published on February 22, 2002 (67 FR 8246).

Section 552a(e)(4) and (11) of Title 5, United States Code, provides that the public be afforded a 30-day period in which to comment on this addition to OIG's existing record systems. Additionally, a copy of this notice has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r).

AutoAudit, OIG's new automated information tracking and storage system, is an electronic database which organizes and contains assignment work papers. The software cross-references, indexes, and tracks work papers in a centralized, paper-less environment. Records maintained in AutoAudit primarily will be accessed by assignment number. In addition, records may be accessed by reference to any information entered into such system, including name, alias, social security number, address, etc.

EPA–50

SYSTEM NAME:

OIG AutoAudit—EPA/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

National Technology Service Division, Office of Technology Operations and Planning, U.S. Environmental Protection Agency; 79 Alexander Drive; Building 4201, MD–34; Research Triangle Park, North Carolina 27711.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include the assigned OIG auditor or evaluator, the audit or evaluation

requestor, or the interviewee. (If Federal employees, this information will include their name, title, EPA office, EPA organization mail code, General Schedule occupation series and grade, geographic location, and type of employee (*e.g.*, EPA employee or EPA OIG employee).)

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of materials compiled and/or generated in connection with audits, evaluations, and other non-audit services performed by OIG staff. These materials include information regarding the planning, conduct, and resolution of audits and evaluations of EPA programs and participants in those programs, information requests, responses to such requests, reports of findings, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. app. 3.

PURPOSE(S):

The records contained in the systems are used by the OIG in furtherance of the responsibilities of the Inspector General under the Inspector General Act of 1978, as amended, to conduct and supervise audits and other reviews relating to programs and operations of the EPA; to promote economy, efficiency, and effectiveness in the administration of such programs and operations; and to prevent and detect fraud and abuse in such programs and operations. The records, especially work papers, are used to generate audit and other reports. The system will automate the work papers including organization, retrieval, and indexing.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses: EPA's general routine uses A through K apply to this system. *See* 66 FR 49947–49948 for a list of EPA's general routine uses. In addition, EPA OIG's 13 specific routine uses for its Inspector General's Operating and Reporting System Investigative Files apply to this system. *See* 66 FR 49948–49949.

POLICIES AND PRACTICES FOR STORING, RETRIEVING ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are stored electronically in office automation equipment and manually in file jackets.

RETRIEVABILITY:

Records primarily will be retrieved by assignment number. Records may also be retrieved by audit report number; name of the assigned OIG auditor or evaluator; or the name of the audit or evaluation requestor, interviewee, or subject matter of the audit.

SAFEGUARDS:

Computer records are maintained in a secure, password protected computer system. All records are maintained in secure areas or buildings with physical access and environmental controls. Direct access to the electronic database is limited to authorized employees of the OIG.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with EPA Records Control Schedule 700, Inspector General Records, approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Audits, Office of Inspector General (2421), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

NOTIFICATION PROCEDURES:

The System Manager will accept inquiries from individuals seeking notification of whether the system contains records pertaining to them.

RECORD ACCESS PROCEDURES:

Requests for access should be made in writing to the System Manager in accordance with EPA's regulations at 40 CFR part 16. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including from EPA, other Federal agencies, the General Accounting Office (GAO), law enforcement agencies, program participants, subject individuals, complainants, witnesses and other non-governmental sources.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: July 5, 2002.

Kim Nelson,

Assistant Administrator and Chief Information Officer.

[FR Doc. 02–20452 Filed 8–12–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 27, 2002.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Craig L. Larson, Bismarck, North Dakota; to acquire voting shares of First Southwest Bancorporation, Bismark, North Dakota, and thereby indirectly acquire voting shares of First Southwest Bank, Bismarck, North Dakota.

Board of Governors of the Federal Reserve System, August 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20397 Filed 8–12–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Morrill Bancshares, Inc., Sabetha, Kansas; to acquire and merge with Morrill & Janes Bancshares, Inc., Hiawatha, Kansas, Onaga Bancsahares Inc., Merriam, Kansas; and thereby acquire shares of Morrill & Janes Bank & Trust Co., Hiawatha, Kansas; The First National Bank of Onaga, Onaga, Kansas; Century Capital Financial, Inc., Kilgore, Texas; Century Capital Financial - Delaware, Inc., Wilmington, Delaware; and City National Bank, Kilgore, Texas.

In connection with this application, Applicant also has applied to acquire FBC Financial Corporation, Claremore, Oklahoma, and thereby indirectly acquire 1st Bank Oklahoma, Claremore, Oklahoma, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

In addition, Applicant also has applied to engage *de novo* through First Trust Company of Onaga, Onaga, Oklahoma, in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, August 7, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–20398 Filed 8–12–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 012 3240]

Microsoft Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 9, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: J. Howard Beales, III, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3240.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f) and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 8, 2002), on the World Wide Web, at ''*http://www.ftc.gov/os/2002/08/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Microsoft Corporation Microsoft Corporation (''Microsoft'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

Microsoft develops, manufacturers, license, and supports a myriad of software products, sells hardware devices, provides consulting services, trains and certified system developers, and offers a variety of online services. This matter concerns allegedly false or misleading representations made in connection with three related Microsoft services: the Passport Single Sign-In service (''Passport''); Passport Express Purchase (generally referred to as ''Passport Wallet''); and Kids Passport (referred to collectively as the ''Passport services''). Passport is an online authentication service that allows consumers to sign in at multiple Web sites with a single username and password. Passport Wallet and Kids Passport are add-on services that provide online purchasing and parental consent services.

The Commission's proposed complaint alleges that Microsoft misrepresented:

(1) that it maintained a high level of online security by employing sufficient measures reasonable and appropriate under the circumstances to maintain and protect the privacy and confidentiality of personal information obtained from or about consumers in connection with the Passport and Passport Wallet services;

(2) that purchase made at a Passport Express Purchase site with Passport Wallet are safer or more secure than purchases made at the same Passport

Express Purchase site without using the Passport Wallet;

(3) that Passport did not collect any personally identifiable information other than that described in its privacy policy, when, in fact, Passport collected, and maintained for a limited period of time, a personally identifiable record of the sites to which a Passport user signed in, along with the dates and times of sign in, which customer service representatives linked to a user's name in order to respond to a user's request for service; and

(4) that the Kids Passport service provides parents with control over the information their children could provide to participating Passport sites and the use of that information by such sites.

The proposed consent order applies to the collection and storage of personal information from or about consumers in connection with the advertising, marketing, promotion, offering for sale, or sale of Passport, Kids Passport, Passport Wallet, any substantially similar product or service, or any multisite online authentication service. It contains provisions designed to prevent Microsoft from engaging in practices similar to those alleged in the complaint in the future.

Specifically, Part I of the proposed order prohibits misrepresentations regarding Microsoft's information practices, including:

- what personal information is collected from or about consumers;
- the extent to which respondent's product or service will maintain, protect or enhance the privacy, confidentiality, or security of any personally identifiable information collected from or about consumers.
- the steps respondent will take with respect to personal information it has collected in the event that it changes the terms of the privacy policy in effect at the time the information was collected;
- the extent to which the service allows parents to control what information their children can provide to participating sites or the use of that information by such sites; and
- any other matter regarding the collection, use, or disclosure of personally identifiable information.

Part II of the proposed order requires Microsoft to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to Microsoft's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the order requires Microsoft to:

- designate an employee or employees to coordinate and be accountable for the information security program;
- identify material internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment will include consideration of risks in each area of relevant operation, including: (1) employee training and management; (2) information systems, including network and software design, information processing, storage, transmission and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other systems failures;
- design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures; and
- evaluate and adjust its information security program in light of the results of testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that Microsoft knows or has reason to know may have a material impact on its information security program.

Part III of the proposed order requires that Microsoft obtain within one year, and on a biannual basis thereafter, an assessment and report from a qualified, objective, independent third-party professional, using procedures and standards generally accepted in the profession, certifying that: (1) Microsoft has in place a security program that provides protections that meet or exceed the protections required by Part II of this order; and (2) Microsoft's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumer's personal information has been protected.

Parts IV through VII of the proposed order are reporting and compliance provisions. Part IV requires Microsoft's retention of materials relating to its privacy and security representations and to its compliance with the order's information security program. Part V requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status. Part VII mandates compliance reports within sixty (60) days after service of the order and at such other times as the Federal Trade Commission may require. Part VII is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 02–20473 Filed 8–12–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–42–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Joint Canadian U.S. Survey of Health (CUJHS)—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). CUJHS is a one-time collaborative effort of Statistics Canada and the U.S. National Center for Health Statistics to conduct a telephone survey in both countries using the same questionnaire. Approximately 3,000 adults will be interviewed in Canada and 5,000 adults in the U.S. The questionnaire will cover chronic health conditions, functional status and limitations, smoking, height and weight, cancer screening, access to health care, and demographics. The project will be jointly funded with each agency

covering the costs of data collection of their own sample and the sharing of all other costs.

The purpose of the survey is to move the national health surveys of both countries toward closer comparability so the health status among residents of countries can be compared in a more concrete manner. This will allow researchers to study the effect of variations in health systems on health care, health status and functional status. This effort can also serve as a model for improving comparability among national health studies generally. A need for such comparability has been noted by the World Health Organization, the Centers for Disease Control and Prevention and the Robert Wood Johnson Foundation who is funding the study in part.

The specific data from the CUJHS may well contribute toward meeting some of the research needs directly. Its longer term impact will be to demonstrate best practices for use in bi-national and multi-national health surveys. The annual burden for this data collection is 2,292 hours.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)
Screener	7500	1	5/60
Survey	5000	1	20/60

Dated: August 6, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, , Centers for Disease Control and Prevention.

[FR Doc. 02–20427 Filed 8–12–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–293]

Agency Information Collection Activities: Proposed Collection; 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 Telephone Customer Satisfaction Survey; *Form No.:* CMS–R–293 (OMB# 0938–0780); *Use:* In response to the National Partnership for Reinventing Government Performances and Results Act (GPRA), CMS is implementing a number of initiatives to measure and then improve the customer service that is provided by Medicare Call Centers, that service over 21 million calls annually. This particular initiative is to provide the 75+ call centers with suitably trained staff and survey materials to conduct a standardized random sample of beneficiary calls, and then administer a customer satisfaction questionnaire. The goal is to develop a national baseline measure of customer satisfaction with the Medicare telephone service provided by carriers and fiscal intermediaries. The respondents for this study will consist of beneficiaries and their advocates who phone Medicare call centers.; *Frequency:* On occasion, semi -annually, and other (single 800# survey); *Affected Public:* Individuals or households; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 3,500

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's 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 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances Attention: Melissa Musotto Room N2–14–26 7500 Security Boulevard Baltimore, Maryland 21244–1850.

Dated: August 6, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–20469 Filed 8–12–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–2746]

Agency Information Collection Activities: Proposed Collection; 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:* End Stage Renal Disease Death Notification; *Form No.:* CMS–2746 (OMB# 0938–0448); *Use:* The form is completed by all Medicare approved ESRD facilities upon the death of an ESRD patient. Its primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients.; *Frequency:* On occasion, weekly; *Affected Public:* Business or other for-profit, Not-for-profit institutions, Federal Government; *Number of Respondents:* 4,500; *Total Annual Responses:* 63,989; *Total Annual Hours:* 1,088.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's 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 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 6, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–20470 Filed 8–12–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0400]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients

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 September 12, 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 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.

Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biological Products in Pediatric Patients—(OMB Control Number 0910–0392)—Reinstatement

FDA regulations require pediatric studies of certain new and marketed drugs and biological products to ensure that those products that are likely to be commonly used in children or that represent a meaningful therapeutic benefit over existing treatments contain adequate pediatric labeling for the approved indications at the time of, or soon after, approval (see 63 FR 66632, December 2, 1998). Many drugs and biological products represent treatments that are the best available treatment for children, but most of them have not been adequately tested in the pediatric population. As a result, product labeling frequently fails to provide directions for safe and effective use in pediatric patients. The regulations are intended to increase the number of drugs and biological products, with clinically significant use in children, that carry adequate labeling for use in that subpopulation. Specifically, the regulations are intended to address the following concerns: (1) Avoidable adverse drug reactions in children—drug reactions that occur because of the use of inadvertent drug overdoses or other drug administration problems that could have been avoided with better information on appropriate pediatric use; and (2) undertreatment of children with a potentially safe and effective drug because the physician either prescribed an inadequate dosage or regimen, prescribed a less effective drug, or did not prescribe a drug, due to the physician's uncertainty about whether the drug or the dose was safe and effective in children.

The regulations contain the following reporting requirements that are subject to the PRA:

21 CFR 201.23(a)—Manufacturers of marketed drug products submit an application containing data adequate to assess whether the drug product is safe and effective in pediatric populations; applicants develop a pediatric formulation for FDA approval.

21 CFR 201.23(c)—Applicants request a full waiver of the requirements under § 201.23(a) by certifying that necessary studies are impossible or highly impractical or there is evidence that the product would be ineffective or unsafe in all pediatric age groups. Applicants request a partial waiver of the requirements under § 201.23(a) by certifying that: (1) The product does not represent a meaningful therapeutic benefit over existing therapies for pediatric patients in that age group, it is not likely to be used in a substantial number of patients in that age group, and the absence of adequate labeling could not pose significant risks to pediatric patients; or (2) necessary studies are impossible or highly impractical, or there is strong evidence that the product would be ineffective or unsafe in that age group, or the applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

21 CFR 312.47(b)(1)(iv)—Sponsors submit background information on the sponsor's plan for phase 3, including plans for pediatric studies, including a time line for protocol finalization, enrollment, completion, and data analysis, or information to support any

planned request for waiver or deferral of pediatric studies.

21 CFR 312.47(b)(2)—Sponsors submit information on the status of needed or ongoing pediatric studies.

21 CFR 314.50(d)(7)—Applicants submit a pediatric use section, describing the investigation of the drug for use in pediatric populations.

21 CFR 314.55(a)—Applications contain data that are adequate to assess the safety and effectiveness of the drug product for the claimed indications in pediatric subpopulations and to support dosing and administration.

21 CFR 314.55(b)—Applicants request a deferred submission of some or all assessments of safety and effectiveness required under § 314.55(a) by certifying to the grounds for delaying pediatric studies, a description of planned or ongoing studies, and evidence that studies will be conducted at the earliest possible time.

21 CFR 314.55(c)—Applicants request a full waiver of the requirements under § 314.55(a) by certifying that the product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients and is not likely to be used in a substantial number of pediatric patients, necessary studies are impossible or highly impractical, or there is strong evidence that the product would be ineffective or unsafe in all pediatric age groups. Applicants request a partial waiver of the requirements under § 314.55(a) by certifying that: (1) The product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients in that age group and it is not likely to be used in a substantial number of patients in that age group; (2) necessary studies are impossible or highly impractical; (3) there is evidence that the product would be ineffective or unsafe in that age group; or (4) the applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

21 CFR 314.81(b)(2)(i)—Applicant's annual report includes a brief summary of whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population have been initiated.

21 CFR 314.81(b)(2)(vi)(c)—Applicant's annual report includes an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information.

21 CFR 314.81(b)(2)(vii)—Applicant's annual report includes a status report containing a statement indicating whether postmarketing clinical studies in pediatric populations were required by FDA under § 201.23, and if so, the status of these studies.

21 CFR 601.27(a)—Applications for new biological products contain data that are adequate to assess the safety and effectiveness of the biological product for the claimed indications in pediatric subpopulations, and to support dosing and administration information.

21 CFR 601.27(b)—Applicants request a deferred submission of some or all assessments of safety and effectiveness required under § 601.27(a).

21 CFR 601.27(c)—Applicants request a full waiver of the requirements under § 601.27(a) by certifying that the product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients and is not likely to be used in a substantial number of pediatric patients, necessary studies are impossible or highly impractical, or there is strong evidence that the product would be ineffective or unsafe in all pediatric age groups. Applicants request a partial waiver of the requirements under § 601.27(a) by certifying that: (1) The product does not represent a meaningful therapeutic benefit over existing treatments for pediatric patients in that age group and it is not likely to be used in a substantial number of patients in that age group; (2) necessary studies are impossible or highly impractical; (3) there is evidence that the product would be ineffective or unsafe in that age group; or (4) the applicant can demonstrate that reasonable attempts to produce a pediatric formulation necessary for that age group have failed.

21 CFR 601.28(a)—Sponsors annually submit to FDA a brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated.

21 CFR 601.28(b)—Sponsors submit to FDA an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information.

21 CFR 601.28(c)—Sponsors submit to FDA a statement on the current status of any postmarketing studies in the pediatric population performed by, or on behalf of, the applicant.

FDA estimates that the collection of information resulting from these regulations is as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
201.23(a)	2	1	2	48	96
201.23(c)	0	0	0	0	0
312.47(b)(1)(iv)	107	1.2	131	16	2,096
312.47(b)(2)	100	1.3	127	16	2,032
314.50(d)(7) and 314.55(a)	59	1.3	78	50	3,900
314.55(b)	60	1.3	80	24	1,920
314.55(c)	79	1.3	105	8	840
314.81(b)(2)(i)	119	1.3	158	8	1,264
314.81(b)(2)(vi)(c)	119	1.3	158	24	3,792
314.81(b)(2)(vii)	6	1	6	1.5	9
601.27(a)	2	1	3	48	144
601.27(b)	5	1	5	24	120
601.27(c)	3	1	4	8	32
601.37(a)	69	1	69	8	552
601.37(b)	69	1	69	24	1,656
601.37(c)	69	1	69	1.5	104
Total					18,557

In the **Federal Register** of September 27, 2001 (66 FR 49389), FDA requested comments on the proposed collection of information. FDA received one comment. The comment stated, generally, that FDA underestimated the resources required to satisfy the collection of information, and requested that the agency provide a more detailed discussion of the assumptions and methodology used to develop the estimates.

First, the comment stated that the burden to comply with the information collection requirements in § 201.23(a) ''would involve hundreds of hours of development time and a variety of scientific specialities'' if a sponsor had to submit a supplemental application or a new drug application (NDA) for a pediatric formulation. The comment said that even if the burden for submitting a pediatric application is included under the other estimates in the **Federal Register** notice (66 FR 49389), the burden for § 201.23(a) (which ''would be limited to the sponsor's 'opportunity for a written response and a meeting which may include an advisory committee meeting'") would still be greater than the 48 hours per response estimated by FDA.

Second, the comment stated that FDA's estimate for compliance with the information collection requirements in §§ 314.55(a) and 601.27(a) is low ''because the collection, analysis, and reporting of data adequate to support pediatric use of a new drug or biological product * * * involves extensive resources of a multidisciplinary team to plan and execute the necessary clinical development program * * *.''

Third, the comment questioned why FDA's estimate for the number of annual responses in § 314.50(d)(7) is not equal to the estimate for the number of annual responses in § 314.55(a), because ''§ 314.50(d)(7) requires the pediatric section of an application to include ''information submitted under § 314.55.''

Fourth, the comment questioned why FDA did not provide a burden estimate for § 314.50(d)(3) (human pharmacokinetics (PK) and bioavailability section of an application) and (d)(5) (clinical data section of an application).

Fifth, the comment stated that FDA's estimate of 100 respondents for § 314.81(b)(2)(i), (b)(2)(vi)(c), and (b)(2)(vii) is low, and that ''FDA might expect approximately 3,000 responses annually'' (not including responses from holders of approved biological license applications) because there are approximately 3,000 NDAs included in the *Approved Drug Products With Therapeutic Equivalence Evaluations*.

FDA appreciates the information provided by the comment and has reconsidered the burden estimates in the September 27, 2001, notice.

Concerning the question whether the numbers in table 1 (66 FR 49389 at 49390) represent totals of all submissions since December 2, 1998, or whether they represent an annualized number based on the total received, table 1 of this document contains annualized estimates based on the submissions received.

Concerning the comments on the adequacy of FDA's burden estimates for §§ 201.23(a) and 314.55(a), the agency agrees that the collection and analysis of data adequate to support pediatric use and to develop a pediatric formulation would be more burdensome than the estimates provided in the September 27, 2001, notice. The September 27, 2001, notice and this document, however, are part of the process to request that OMB extend approval for the collection of information described in the final rule entitled ''Regulations Requiring Manufacturers to Assess the Safety and Effectiveness of New Drugs and Biologicals Products in Pediatric Patients,'' published in the **Federal Register** of December 2, 1998 (63 FR 66632 at 66659). In the final rule (63 FR 66632 at 66660), FDA also estimated the costs associated with conducting and analyzing efficacy studies, PK studies, and new dosage form development. These industry costs total approximately $80 million annually. The analysis of the economic impact of the regulation is required under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act. The added burden cited by the comment for §§ 201.23(a) and 314.55(a) has been estimated by FDA in the economic analysis. Only the burden associated with compiling and reporting to FDA information already obtained is the subject of this notice and the September 27, 2001, notice. FDA published for public comment its initial estimate of this collection of information in the **Federal Register** of August 15, 1997 (62 FR 43900 at 43909). In the final rule, FDA discussed the comments on the burden estimates and revised the estimate for §§ 201.23(a) and 314.55(a) from 16 hours to 48 hours. Thus, FDA believes that the collection of information estimate together with the cost estimate made in the analysis of the economic impact of the regulation provide an adequate assessment of the industry burden resulting from §§ 201.23(a) and 314.55(a).

As a result of the comment that the number of annual responses in § 314.50(d)(7) should be equal to the number of annual responses in § 314.55(a), FDA has reconsidered its analysis of the collection of information resulting from these sections of the regulation. Under § 314.50(d)(7), applicants must submit as part of an application and supplement to an approved application a ''pediatric use section.'' This section must describe the investigation of the drug for use in pediatric populations, including an integrated summary of the information that is relevant to the safety and effectiveness and benefits and risks of the drug in pediatric populations for the claimed indications, a reference to the full descriptions of such studies provided under § 314.50(d)(3) and (d)(5), and information required to be submitted under § 314.55. Under § 314.55(a), applications must contain data that are adequate to assess the safety and effectiveness of the drug product for the claimed indications in all relevant pediatric subpopulations, and to support dosing and administration for each pediatric subpopulation for which the drug is safe and effective. FDA has determined that, for purposes of this collection of information analysis, the requirement to submit pediatric use information would more appropriately come under § 314.50(d)(7). Section § 314.55(a) is the requirement to obtain pediatric use information for reporting to FDA under § 314.50(d)(7). Thus, FDA is including the reference to § 314.55(a) in the same entry as § 314.50(d)(7) in table 1 of this document. As a result of more recent data, FDA has revised its estimate of the number of responses and respondents under § 314.50(d)(7). Based on the number of submissions to FDA of the required assessments of pediatric safety and effectiveness during 2001, FDA estimates that approximately 59 applicants will submit approximately 78 assessments annually.

Concerning the comment that FDA did not provide a burden estimate for § 314.50(d)(3) and (d)(5), this notice and the September 27, 2001, notice are part of the process to request that OMB extend approval for the collection of information described in the December 2, 1998, final rule. The final rule did not amend § 314.50(d)(3) and (d)(5) and, therefore, these sections were not included in the collection of information analysis in the final rule. The information collection under § 314.50(d)(3) and (d)(5), as well as other provisions under 21 CFR part 314, are already approved by OMB until

November 30, 2004, under OMB control number 0910–0001.

The comment also stated that FDA's estimate of 100 respondents for § 314.81(b)(2)(i), (b)(2)(vi)(c), and (b)(2)(vii) is low, and that over 3,000 responses should be expected annually. Under these sections, applicants must submit in their annual report: (1) A brief summary of whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population have been initiated; (2) an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information; and (3) a status report containing a statement indicating whether postmarketing clinical studies in pediatric populations were required by FDA under § 201.23, and if so, the status of these studies. Thus, only the annual reports for those approved applications that contain or will contain pediatric use information would be covered by these sections. As a result of more recent data, FDA has revised its estimates of the number of responses and respondents for these sections. Based on the number of currently approved applications and the number of pending applications that contain pediatric use information, FDA estimates approximately 119 applicants will submit approximately 158 annual reports under § 314.81(b)(2)(i), approximately 119 applicants will submit approximately 158 annual reports under § 314.81(b)(2)(vi)(*c*), and approximately 6 applicants will submit approximately 6 annual reports under § 314.81(b)(2)(vii).

As a result of more recent FDA data on the number of requests for deferrals and waivers received by the agency in 2001, FDA has also revised the estimates for § 314.55(b) and (c) as reflected in the table 1 of this document.

Dated: August 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–20431 Filed 8–12–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Regional AIDS Education and Training Centers; Open Competition Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Open Competition Grant Program.

SUMMARY: The Health Resources and Services Administration (HRSA), HIV/AIDS Bureau (HAB), announces that applications will be accepted for fiscal year (FY) 2002 awards for up to three Regional AIDS Education and Training Centers (AETCs) to provide services to Michigan, Ohio, Kentucky, New York, Tennessee, and New Jersey. The Regional AETCs will provide services in regions consisting of two or more States; existing regional AETCs may apply to expand their current areas by one or more States. The regional AETCs enhance the availability of high quality HIV care through training and support of clinical providers, and prioritize the clinical educational needs of direct medical care providers, physicians, nurses, physicians assistants, advance practice nurses, pharmacists, and oral health providers. The regional AETCs conduct assessments of regional HIV/AIDS care delivery systems and develop innovative programs to build HIV/AIDS care capacity, through training and support, to fill identified gaps. The regional AETCs target clinical providers caring for minority and disproportionately affected populations, particularly minority providers and those associated with Ryan White Comprehensive AIDS Resources Emergency (CARE) Act supported facilities.

Availability of Funds: It is anticipated that up to three grant recipients will be selected as regional AETCs, and total available funds are approximately $4,000,000. Grant periods are for 2 years and 9 months, with initial funding for 9 months. Continuation awards will be made on the basis of satisfactory progress and the availability of funds.

Eligible Applicants: Grants may be awarded to public or private non-profit entities including schools and academic health sciences centers. Faith-based and community-based organizations are eligible to apply.

Authorizing Legislation: The Authority for this grant program is Section 2692(a) of the Public Health Service Act, as amended, 42 U.S.C. 300ff–111(a).

DATES: A letter of intent to submit an application is requested by August 27, 2002. Applications for this grant must be received in the HRSA Grant Application Center by close of business September 12, 2002. Applications shall be considered as meeting the deadline if they are received on or before the deadline date. Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications postmarked after the due date will be returned to the applicant.

Where to Request and Send an Application

To obtain an application kit: Call the HRSA Grants Application Center at 877–477–2123 and request the OMB Catalogue of Federal Domestic Assistance number 93.145.

ADDRESSES: Letter of intent to apply for funding should be mailed to Marisol M. Rodriguez, HIV/AIDS Bureau, HRSA, 5600 Fishers Lane, Room 7–46, Rockville, Maryland, 20857. All applications should be mailed or delivered to HRSA Grant Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879. Grant applications sent to any other address are subject to being returned. **Federal Register** notices are available on the world wide web via the Internet. The Web address for HAB is *http://www.hrsa.gov/hab/.*

FOR FURTHER INFORMATION CONTACT: Additional technical information may be obtained from Marisol M. Rodriguez, HIV/AIDS Bureau (HAB), HRSA, 5600 Fishers Lane, Room 7–46, Rockville, Maryland 20857. The telephone number is (301) 443–4082; fax number (301) 443–9887; and the e-mail is *mrodriguez@hrsa.gov.* You may also contact Laura W. Cheever, M.D., Chief, HIV Education Branch, Division of Training and Technical Assistance, HAB, HRSA, 5600 Fishers Lane, Room 7–46, Rockville, Maryland 20857. Her telephone number is (301) 443–3067 and fax number is (301) 443–9887.

SUPPLEMENTARY INFORMATION: Applications will be reviewed by an objective review committee using the following criteria: Adequacy of Comprehensive Regional Needs Assessment, Adequacy of the Proposed Program Plan for Providing Education and Training Activities, HIV Expertise within the Regional AETC; Coordination and Collaboration; Management, Plan, Staffing, Project Organization and Resources, Program Documentation, Evaluation and Quality Improvement, and Appropriateness, and Justification of the Budget. The Secretary shall give preference to qualified projects which will-

(A)Train, or result in the training of, health professionals who will provide treatment for minority individuals with HIV disease and other individuals who are at high risk of contracting such disease; and

(B)Train, or result in the training of, minority health professional and minority allied health professionals to provide treatment for individuals with such disease.

Paperwork Reduction Act: If there is a data collection associated with this application OMB approval will be sought.

Dated: July 22, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–20556 Filed 8–12–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: July 2002

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of July 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.,* a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject City, State	Effective Date
Program-Related Convictions	
Agazarian, Stepan, Los Angeles, CA	08/20/2002
Bahamon, Ramiro, Colton, CA	08/20/2002
Barton, Lupe Eva, Lake Forest, CA	08/20/2002
Brooks-McArthur, Pamela, Detroit, MI	08/20/2002
Bufkin, Anthony L, Kingstree, SC	08/20/2002
Burks, Louis, Clythe, CA	08/20/2002
Butcher, Holly W, The Colony, TX	08/20/2002
Butt, Audrey Renee, Iowa City, IA	08/20/2002
Candelaria, Christina Marie, Wheat Ridge, CO	08/20/2002
Cummings, Patricia Ann, Holbrook, AZ	08/20/2002
Devera, Monica T, Dumont, NJ	08/20/2002
Diaz, Jesus, Miami, FL	08/20/2002
Dotson, Janice, Branch, AR	08/20/2002
Foster, Donald Edgar, Nashville, TN	08/20/2002
Garcia, Eduardo, Los Angeles, CA	08/20/2002
Gonzalez, Ana Rosa, Miami, FL	04/10/2001
Harris, Shawanda, Miami, FL	08/20/2002
Hart, Jimmy Willis, Memphis, TN	08/20/2002
Hawkinberry, Cynthia L, Wakeman, OH	08/20/2002
Hudson, Paul Edward, Sacramento, CA	08/20/2002
Huff, Deanna Rachelle, Detroit, MI	08/20/2002
Jimenez, Aurelio, P, Oxford, WI	08/20/2002
Jones, Shirley A, Ft Worth, TX	08/20/2002
Jones, Steven L, Big Spring, TX	08/20/2002
Krayzman, Boris, Encino, CA	08/20/2002
Lewis, Terry Lamond, Rialto, CA	08/20/2002
Luna, Javier, Corona, CA	08/20/2002
Maye, Rose Mary, Laurel, MS	08/20/2002
Mayo, Kevin Allen, Morgantown, WV	08/20/2002
Meyers, Carliss R, Box Elder, SD	08/20/2002
Nelson, David S, Winston-Salem, NC	04/16/2001
Rector, Joel M, New York, NY	08/20/2002
Renick, John T, Lynn Haven, FL	08/20/2002
Riazi, Ali Motamed, Beverly Hills, CA	08/20/2002
Rohar, Lynette Mae, San Bernardino, CA	08/20/2002
Sell, Mary R, Troy, MO	08/20/2002
Sharpe, Mark J, Hardwick, GA	08/20/2002
Sill, Burnie Lee, Cedaredge, CO	08/20/2002
Sternat, Michelle Marie, Mt Union, IA	08/20/2002
Stoltzfus, Warren, Lewisville, TX	08/20/2002
Suarez, Luis Ramon, Miami, FL	08/20/2002
Sudaria, Nicanor C, Anchorage, AK	08/20/2002
Tekeian, Gohar, Los Angeles, CA	08/20/2002
Thompson, Lisa, Pine Bluff, AR	08/20/2002
Trotter, Mary, Rochester, NY	08/20/2002
Vaughn, John L, Knoxville, TN	08/20/2002
Vega, Armando Richard, Elkton, OH	08/20/2002
Wahba, Samuel, Palm Harbor, FL	08/20/2002
Walker, Robert D, Pewee Valley, KY	08/20/2002
Wallace, Linda C, Lebanon, OH	08/20/2002
Ward, Douglas Austin, Lancaster, CA	08/20/2002
Wilson-Zupa, Karen, Houston, TX	08/20/2002
Woo, Yu Moon, Elmhurst, NY	08/20/2002
Woods, Brenda Joyce, Sacramento, CA	08/20/2002
Felony Conviction for Health Care Fraud	
Allen, Derlyn G, Tampa, FL	08/20/2002
Concessi, Michael J, Goldsboro, NC	08/20/2002
Foster, Jack Randall, Springfield, MO	08/20/2002
Healthwise Medical Rehab Ctrs, Chesapeake, VA	08/20/2002
Hemphill, Robert, Saginaw, MI	08/20/2002
Schape-Self, Rosemarie Susanne, Spokane, WA	08/20/2002
Seals, Inez J, Pikeville, TN	08/20/2002
Silvino, Emmanuel, San Antonio, TX	08/20/2002
Spatz, Marvin Charles, San Diego, CA	08/20/2002
Spatz, Marvin Charles, San Diego, CA	08/20/2002
Spatz, Marvin Charles, San Diego, CA	08/20/2002
Stock, Rodolpho K, Charleston, WV	08/20/2002
Vavilikolanu, Sheshiqiri Rao, Terre Haute, IN	08/20/2002
Wood, Faye W, Princeton, NJ	08/20/2002
Felony Control Substance Conviction	
Arellano, Teresa Marie, San Francisco, CA	08/20/2002
Borne, Maxie Joseph, Las Vegas, NV	08/20/2002
Fisher, Robin Noel, Marshalltown, IA	08/20/2002
Gaskins, Shawna Gail, Gatesville, TX	08/20/2002
Gibson, Pamela Gaynelle, Jonesville, VA	08/20/2002
Harrell, Pamela L, Katy, TX	08/20/2002
Jorgensen, Bruce Craig, Clinton, UT	08/20/2002
Morris, Craig Alan, Lakewood, CO	08/20/2002
Osler, Karen Ann, Malvern, IA	08/20/2002
Pizarro, Michelle Linn, Sioux City, IA	08/20/2002
Rohaus, Robert, Bridgewater, NJ	08/20/2002
Scott, Dona Lee, Southfield, MI	08/20/2002
Patient Abuse/Neglect Convictions	
Akaya, Nicodemus Ichabu, Los Angeles, CA	08/20/2002
Alger, Tony L, Worcester, VT	08/20/2002
Andres, Gilbert Tamayo, Corcoran, CA	08/20/2002
Bratcher, Louis, Fresno, CA	08/20/2002
Cianci, Marilyn I, Monroe, NY	08/20/2002
Courtyard Manor Farmington Hill, Walled Lake, MI	08/20/2002
Darlington, Casey Shawn, Rock Springs, WY	08/20/2002
Dennis, Tammye Lynn, Stillwater, OK	08/20/2002
Doran, Faith L, Syracuse, NY	08/20/2002
Edwards, Lorna F, Bronx, NY	08/20/2002

Subject City, State	Effective Date
Eltringham, Teresa Ann, St Mary's, WV	08/20/2002
Gardner, Darrell, Bakersfield, CA	08/20/2002
Goldstein, Seymour, Wilmington, DE	08/20/2002
Gorondy, Larry Joe, Gunther, TX	08/20/2002
Hampton, Yolanda V, Kingfisher, OK	08/20/2002
Herring, Gary Jr, Youngstown, OH	08/20/2002
Hildebrand, John Francis, Elk Grove, CA	08/20/2002
Hoskins, Valerie Lynn, Somerset, KY	08/20/2002
Houston, Vivian Shunn, Clarendon, AR	08/20/2002
Ingold, William Alan, Searcy, AR	08/20/2002
Joiner, Elizabeth Rodriguez, Lovell, WY	08/20/2002
Jones, Rosalie S, Galatia, IL	08/20/2002
Leodones, Jeffrey Domingo, Represa, CA	08/20/2002
Lewis, Jerry D, Millington, TN	08/20/2002
Manns, Carl, Arlington, TN	08/20/2002
McCarthy, Michael J, Everett, WA	08/20/2002
McCulley, Willie, Oakland, TN	08/20/2002
McDougle, Carl, Memphis, TN	08/20/2002
McGillen, James W, Harwich, MA	08/20/2002
McLemore, Alma Abeyta, Concord, CA	08/20/2002
Mohammed, Idris G, Sacramento, CA	08/20/2002
Resvaloso, Robert Kenneth, Fresno, CA	08/20/2002
Sarabia, Epifanio Fierro, FT Stockton, TX	08/20/2002
Tafoya, Robert Anthony, Santa Cruz, CA	08/20/2002
Truitt, Eve P, Jonesboro, AR	08/20/2002
Wannamaker, Julie, Albion, NY	08/20/2002
Zherebnyuk, Nokolay, Sacramento, CA	08/20/2002
Conviction For Health Care Fraud	
Durham, Rebecca, Elkin, SC	08/20/2002
Conviction-Obstruction of an Investigation	
Reyes, Patricia Yvonne, El Paso, TX	08/20/2002
Controlled Substance Convictions	
Crespo, Lucinda, Schuyler Falls, NY	08/20/2002
License Revocation/Suspension/ Surrendered	
Adkins, Darryel Lewis, San Antonio, TX	08/20/2002
Adkins, Tammy G, Mount Pleasant, PA	08/20/2002
Aucoin, Byron L, Morgan City, LA	08/20/2002
Avery, Thomas Andrew, Shawnee, OK	08/20/2002
Ballard, Charisse Camille, Cabot, AR	08/20/2002
Barbour, Angela L, Martinsville, VA	08/20/2002
Barkhurst, Jennifer L, Richmond, VA	08/20/2002
Beardsley, Major J, Elba, NY	08/20/2002
Behan, Kevin M, Poestenkill, NY	08/20/2002
Berkenpas, Sandra S, Salt Lake City, UT	08/20/2002
Beyrer, Robert Norval, Spring Valley, CA	08/20/2002
Bibawy, Adly Anis, Staten Island, NY	08/20/2002
Bizub, Madeline C, Biloxi, MS	08/20/2002
Blevins, Donna Lorraine, Grass Valley, CA	08/20/2002
Bockover, Carol Frizzell, Salisbury, MD	08/20/2002
Boesker, Debra S, Hutchinson, KS	08/20/2002
Bowcutt, Timothy Earl, Tremonton, UT	08/20/2002
Bowes, Peter Joseph, Milwaukee, WI	08/20/2002
Bowick, Judy C, Asbury Park, NJ	08/20/2002
Branson, Cindy Kay, Hutchinson, KS	08/20/2002
Braswell, Bonni J, Alexandria, VA	08/20/2002
Bressickello, John Antony, Torrance, CA	08/20/2002
Brodsky, Ted Marc, Granada Hills, CA	08/20/2002
Brown, Elizabeth Ann, Oxnard, CA	08/20/2002
Bryant, Sara J, St Johnsbury, VT	08/20/2002
Buchanan, Darren Patrick, Moneton NB, Canada,	08/20/2002
Buckner, Michael O, Knoxville, TN	08/20/2002
Byrnes, Robert L, Cortlandt Manor, NY	08/20/2002
Carson, Stephen L, Fall River, MA	08/20/2002
Castro, Lisa Y, Des Plaines, IL	08/20/2002
Caulker, Alex, Alexandria, VA	08/20/2002
Cerny, Michael David, Rushville, NE	08/20/2002
Chickos, Lawrence Edward, Gilroy, CA	08/20/2002
Clack, John Steven, Culver City, CA	08/20/2002
Clark, Illetha, Gautier, MS	08/20/2002
Clemens, Scott E, Pittsburgh, PA	08/20/2002
Colbert, Elizabeth R, Phoenix, AZ	08/20/2002
Comeaux, Gary Wayne, League City, TX	08/20/2002
Cook, Rosemary, Phoenix, AZ	08/20/2002
Cookson, Linda J, Fairfield, ME	08/20/2002
Cooper, William James, Monte Vista, CO	08/20/2002
D'Agostino Cox, Elizabeth A, West Haven, CT	08/20/2002
Daberkow, Glendene Helena, West Point, NE	08/20/2002
Datta, Jagat Kumar, Streamwood, IL	08/20/2002
Debouvier, Jude J, Fayetteville, NC	08/20/2002
Devore, Mary Davis, Phoenix, AZ	08/20/2002
Diamandis, Sotiris P, Canton, MA	08/20/2002
Dorman, Courtney Dawn, Clarendon, AR	08/20/2002
Dziedzic, David M, McHenry, IL	08/20/2002
Elium, Kevin, Porterville, CA	08/20/2002
Elizalde, Christian, Canoga Park, CA	08/20/2002
Elliott, Roger K, Newark, OH	08/20/2002
Eustaquio, Marcos Antonio, Woodhaven, NY	08/20/2002
Farrar, Cynthia, E Rockaway, NY	08/20/2002
Ferebee, Sandra Kaye, Poplar Grove, AR	08/20/2002
Foster, Robert W, Henrico, NC	08/20/2002
Foust, Martha Louise, Lacrosse, KS	08/20/2002
Frigon, Lisa M, Barre, VT	08/20/2002
Frost, Glenda S, Glendale, AZ	08/20/2002
Garcia, Eric Patrick, Carmichael, CA	08/20/2002
Garcia, Patricia Ann, McQueeney, TX	08/20/2002
Garcia, Omar Rene, Waco, TX	08/20/2002
Garcia, Victor M, Eagle Pass, TX	08/20/2002
Gardea, Teresa Marie, Pomona, CA	08/20/2002
Geraci, Caroline Elizabeth, Cincinnati, OH	08/20/2002
Gilbert, Christina, Massapequa, NY	08/20/2002
Ginnetti, John M, New Haven, CT	08/20/2002
Glaenzer, James M, St Charles, MO	08/20/2002
Godfrey, Susanne B, Columbia, SC	08/20/2002
Gonzalez, Guillermo F, Rancho Cucamonga, CA	08/20/2002
Gopalani, Hanif A, Crownsville, MD	08/20/2002
Gover, Marshall, Baton Rouge, LA	08/20/2002
Gowen, Laura, Hatfield, PA	08/20/2002
Greco, Michael Richard, Roy, UT	08/20/2002
Greene, Michael T, Erie, PA	08/20/2002
Griffin, Bridget R, W Topsham, VT	08/20/2002
Groehn, Craig Alan, Ames, IA	08/20/2002
Gryder, Sheila Lynn, McCamey, TX	08/20/2002
Guyton, Kathleen, E Orange, NJ	08/20/2002
Hall, Joan M, Cheshire, CT	08/20/2002
Hambrick, Maureen L, Chicago, IL	08/20/2002
Hamon, Eric Wayne, Sebring, OH	08/20/2002
Harlan, Olivia, Fairbury, NE	08/20/2002
Harmon, David Russell, Steamboat Springs, CO	08/20/2002
Harper, Elayne Woodall, Culpepper, VA	08/20/2002
Haynie, Craig A, Victoria, TX	08/20/2002
Heckler, Sheri Lynn, Lancaster, PA	08/20/2002

Subject City, State	Effective Date
Hiller, Donald John, Tempe, AZ	08/20/2002
Holcombe, Donna, Farmington, NM	08/20/2002
Holmberg, Melissa, Richmond, VA	08/20/2002
Holmes, Wanda Jean, Richford, VT	08/20/2002
Householder, Sharon, Mckeesport, PA	08/20/2002
Humphreys, Jessica N, York, PA	08/20/2002
Hysell, Connie Sue, Shelbyville, IL	08/20/2002
Incelli, Jade Thomas, Levittown, PA	08/20/2002
Ingram, Fannie, Oakdale, LA	08/20/2002
Johnson, Diana Lee, Trinity, TX	08/20/2002
Johnson, Alfred Lane, Boaz, AL	08/20/2002
Johnson, Benjamin Taylor, Golden, CO	08/20/2002
Jones, Veronica L, Morton, MS	08/20/2002
Jones, Cynthia R, Manahawkin, NJ	08/20/2002
Juliano, Linda, Bear, DE	08/20/2002
Ketchale, Joel F, Enfield, CT	08/20/2002
Khaleq, Tory Renee, Houston, TX	08/20/2002
Khan, Farhad Parvez, Simi Valley, CA	08/20/2002
Kirby, Yvonne Edna, Las Vegas, NV	08/20/2002
Klemm, Joanne Marie, Clear Lake, IA	08/20/2002
Kohout, Mary Christine, Nebraska City, NE	08/20/2002
Koory, Christine Lynn, Omaha, NE	08/20/2002
Kordich, Patricia Louise, Azusa, CA	08/20/2002
Kube, Jean Carol, St Paul, MN	08/20/2002
Kunkel, Jon R, Hanover Park, IL	08/20/2002
Kwak, Noik, Astoria, NY	08/20/2002
Leach, David M, Newtown, PA	08/20/2002
Leary, Kenneth, E Greenwich, RI	08/20/2002
Leblanc, Melissa, Prairieville, LA	08/20/2002
Lemon, Karmen L, Denver, CO	08/20/2002
Lewis, Arthur Stephen, Goshen, IN	08/20/2002
Lynn, Jerry Harold, New York, NY	08/20/2002
Mabry, Linda L, Phoenix, AZ	08/20/2002
Maloney, Donna H, West Seneca, NY	08/20/2002
Matlock, John Edward, Chino Valley, AZ	08/20/2002
Maynard, Royce, Abilene, TX	08/20/2002
McBride, Darla Gay, Kilgore, TX	08/20/2002
McColm, Paula Jeanette, Long Beach, CA	08/20/2002
McHattie, Sheila Seybert, Portersville, PA	08/20/2002
McKinney-Reynolds, Beverly, Alta Loma, CA	08/20/2002
McManus, Kathleen M, Jenkintown, PA	08/20/2002
Merica, Sandra Rose, Fairbanks, AK	08/20/2002
Miesel, Patricia J, Eighty Four, PA	08/20/2002
Miller, Debra Renee, Sandpoint, ID	08/20/2002
Mitchell, Elvin, Fullerton, CA	08/20/2002
Moore, Rebecca Jay, Luling, TX	08/20/2002
Myers, Cindy L, Sandpoint, ID	08/20/2002
Myers, Phyllis June, Elkhart, IN	08/20/2002
Nicholson, Robert J Jr, Baton Rouge, LA	08/20/2002
Noel, Linda Sue, Chicago, IL	08/20/2002
Nygren, Jerry Eugene, York, NE	08/20/2002
O'Keefe, Gregory III, Little Falls, NY	08/20/2002
O'Leary, Mary Bernadette, South Bend, IN	08/20/2002
O'Neil, Jerri Lynn, Dayton, TX	08/20/2002
Oliver, Christine P, Selden, NY	08/20/2002
Ori, Vincent Egido, Fair Oaks, CA	08/20/2002
Pape, Beverly J, East Calais, VT	08/20/2002
Paredez, Jude, Beaumont, TX	08/20/2002
Park, John H, Flushing, NY	08/20/2002
Passell, Carlene Ann, Lawrence, KS	08/20/2002
Paszkiewicz, Joseph Edward, Rialto, CA	08/20/2002
Patterson, Carolyn E, Richmond, VA	08/20/2002
Percifield, Brenda Sue, North Vernon, IN	08/20/2002
Phillips, Kurt N, Anchorage, AK	08/20/2002
Pollard, Joanna M, New London, CT	08/20/2002
Powe, Leisa, Tylertown, MS	08/20/2002
Powers, Gary Kent, Cullman, AL	08/20/2002
Privett, Erin Elizabeth, Citrus Hgts, CA	08/20/2002
Ragan, Angela Lynn, Yantis, TX	08/20/2002
Rapp, Timothy J, Dayton, OH	08/20/2002
Reed, Catherine Barbara, Denver, CO	08/20/2002
Reid, Janniet L, Inglewood, CA	08/20/2002
Renfrow, David, Ridgeland, MS	08/20/2002
Reynolds-Bonilla, Elizabeth A, Salina, KS	08/20/2002
Richmond, Eula Ann, Marion, KS	08/20/2002
Ricke, Gregory A, Fort Collins, CO	08/20/2002
Riley, Michele Beaumont, San Diego, CA	08/20/2002
Rivene, Zaida, San Mateo, CA	08/20/2002
Rivera, Tanya M, Sheffield, VT	08/20/2002
Roberts, William K, Salt Lake City, UT	08/20/2002
Rodriguez, Joe Vasquez, Ontario, CA	08/20/2002
Roma, Donna K, Warwick, RI	08/20/2002
Rondosh, Margie Leh, Hazleton, PA	08/20/2002
Roney, George Dane, Evansville, IN	08/20/2002
Roos, Nettie A, Iowa City, IA	08/20/2002
Saltenberger, Patricia E, Farmington, NY	08/20/2002
Schoonhoven, David Lee, Oostburg, WI	08/20/2002
Schram, Thomas Alan, Homosassa, FL	08/20/2002
Senick, Thomas Charles, Pittsburgh, PA	08/20/2002
Serlemitsos, John Paul, Crownsville, MD	08/20/2002
Sheets, Phyllis M, Elliston, VA	08/20/2002
Silvas, George R, Porterville, CA	08/20/2002
Slan, Steven M, Virginia Bch, VA	08/20/2002
Slaughter, Maunetta, Ellisville, MS	08/20/2002
Smith, Heath, Glennville, GA	08/20/2002
Smith, Terri Dianne, Globe, AZ	08/20/2002
Smith, Alphonso L, Woodbury, NJ	08/20/2002
Soderstrom, Linnea A, Glastonbury, CT	08/20/2002
Sommers, Lorin D, N Canton, OH	08/20/2002
Springel, Ronald David, Spokane, WA	08/20/2002
Strempel, Linda Beth, Hermosa Beach, CA	08/20/2002
Sturckow, Karl H, Lakeside, CA	08/20/2002
Sucarichi, Brenda, Pasadena, TX	08/20/2002
Sykora, Viktor, W Coxsackie, NY	08/20/2002
Tankersley, Jeanne Kay, Sapulpa, OK	08/20/2002
Tate, Marian Kay, Murray, UT	08/20/2002
Teed, Elspeth Ann, Uvalde, TX	08/20/2002
Thomas, Billy R, Los Angeles, CA	08/20/2002
Thompson, Paula Marie, Victoria, TX	08/20/2002
Ticzon, Renato A, Watertown, NY	08/20/2002
Trisdale, Sandra, Tucson, AZ	08/20/2002
Vasso, Laura, Kearns, UT	08/20/2002
Vespia, Susan M, Esmond, RI	08/20/2002
Vierow, Morgen Lynn, Sherrill, NY	08/20/2002
Vigil, Susan K Peace, Berea, KY	08/20/2002
Walker, Robin Elaine, Austin, TX	08/20/2002
Wangsgard, Mary M, Salt Lake City, UT	08/20/2002
Wanke, Samantha G, Manlius, NY	08/20/2002
Wariner, Andrew William, Houston, TX	08/20/2002
Warren, Lauri Evelyn, Houston, TX	08/20/2002
Watkins, Helen Colleluori, Wellsboro, PA	08/20/2002
Watkins, Penny R, Meridian, MS	08/20/2002
Waz, Danny James, Ontario, CA	08/20/2002
Weghorn, Pamela Jane, Fridley, MN	08/20/2002
White, Judith A, Putnam, CT	08/20/2002
Wick, Rebecca L, Hallettsville, TX	08/20/2002
Williams, Janson S, Erie, PA	08/20/2002
Williams, R Michael, Troy, NY	08/20/2002
Willing, Kathryn Marie, Sleepy Eye, MN	08/20/2002
Wisely, Betty Anny, Bloomington, IN	08/20/2002
Witriol, Sol, Baltimore, MD	08/20/2002

Subject City, State	Effective Date
Wojcik, Jeffery R, Tucson, AZ ..	08/20/2002
Woods, Kenneth Bruce, Roseville, CA	08/20/2002
Yacker, Tomi Lynn, Colleyville, TX	08/20/2002
Ybarra, Robert A, Shasta, CA ..	08/20/2002
Yellowhair, Robert Lanny, Tucson, AZ	08/20/2002
Federal/State Exclusion/Suspension	
Lazopoulos, George, McHenry, IL	08/20/2002
Rinaldi, Serguis, Springfield, IL	08/20/2002
Fraud/Kickbacks	
Adams, Koule, Chicago, IL	06/12/2002
Mejia, Gloria, Bryan, TX	10/24/2000
Royal Transportation, Hazel Crest, IL	06/12/2002
Thompson, Scott, Clayton, NC	11/13/2001
Williams, Tommy E, Lytle, TX ..	01/11/2001
Williams, Devon, Lytle, TX	01/11/2001
Owned/Controlled by Convicted Entities	
Edward J Urban, D O, INC, Cortland, OH	08/20/2002
Express Medical Home Health, Los Angeles, CA	08/20/2002
G & A Medical Clinic, Inc, Miami, FL	08/20/2002
K & G Medical Supply, Glendale, CA	08/20/2002
Professional Medical Ctr, Inc, Miami, FL	08/20/2002
Sam's Drugs & Medical, Inc, Palm Harbor, FL	08/20/2002
Default on Heal Loan	
Chow, Aaron L, Spanaway, WA	06/28/2002
Metcalf, John W, Tampa, FL	06/19/2002
Urling, Wendell P, Cheshire, CT	07/02/2002
Washington, Diane, S Holland, IL	05/18/2002

Dated: August 1, 2002.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 02–20425 Filed 8–12–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Dates: September 9–10, 2002.

Open: September 9, 2002, 8:30 a.m. to 4 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: September 9, 2002, 4 p.m. to Recess.

Agenda: Review of grant applications; Discussion of confidential personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Open: September 10, 2002, 8:45 a.m. to 11:45 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

An interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home Page: *http://deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control; National Institutes of Health, HHS)

Dated: August 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20420 Filed 8–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel.

Date: August 8, 2002.[1]

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: 6701 Democracy Blvd., Suite 710, Bethesda, MD 20892–4870, (Telephone Conference Call).

Contact Person: John E. Richters, Ph.D., Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. Room 715, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

[1] **Editorial Note:** This document was received at the Office of the Federal Register on August 7, 2002.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20422 Filed 8–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 3, 2002, 12 p.m. to August 3, 2002, 1 p.m., NIH, Rockledge 2, Bethesda, MD 20892 which published in the **Federal Register** on July 26, 2002, 67 FR 48931–48932.

The meeting will be held on August 20, 2002. The time and location remain the same. The meeting is closed to the public.

Dated: August 6, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–20421 Filed 8–12–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–29]

Announcement of Funding Awards for the Indian Community Development Block Grant (ICDBG) Program for Fiscal Year 2001

AGENCY: Office of Native American Programs, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year 2001 Notice of Funding Availability (NOFA) for the Indian Community Development Block Grant (ICDBG) Program. This announcement contains the consolidated names and addresses of this years award recipients under the ICDBG.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Indian Community Development Block Grant Program awards, contact the Area Office of Native American Programs serving your area or Jackie Kruszek, Office of Native Programs, Denver Program Office, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This program provides grants to Indian tribes and Alaska Native Villages to develop viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low and moderate incomes as defined in 24 CFR 1003.4.

The FY 2001 awards announced in this Notice were selected for funding in a competition announced in a NOFA published in the **Federal Register** on February 26, 2001 (66 FR 11709). Applications were scored and selected for funding based on the selection criteria in that Notice and Area Office of Native American Programs (ONAPs) geographic jurisdictional competitions.

The amount appropriated in FY 2001 to fund the ICDBG was $70,843,800 million. Two million of this amount was retained to fund imminent threat grants in FY 2001. Including $440,861 in unused funds from the amount reserved by the Assistant Secretary in FY 2000 for imminent threat grants, a total of $69,284,661 were available to fund single purpose ICDBG grants. The allocations for the Area ONAP geographic jurisdictions are as follows:

Eastern/Woodlands	$5,481,761
Southern Plains	12,972,631
Northern Plains	10,941,946
Southwest	29,848,823
Northwest	4,180,66
Alaska	5,858,836
Total	$69,284,661

The Catalog of Federal Domestic Assistance number for the ICDBG Program is 14.862.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 108 awards made under the various regional competitions in Appendix A to this document.

Dated: August 2, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—2001 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS

Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465	$750,000
Cheyenne-Arapaho Tribes of Oklahoma, P.O. Box 68, Concho, OK 73022	750,000
Chitimacha Tribe of Louisiana, P.O. Box 661, Charenton, LA 70523	750,000
Choctaw Nation of Oklahoma, P.O. Drawer 1210, Durant, OK 74702	750,000
Chickasaw Nation, P.O. Box 1548, Ada, OK 74821	750,000
Citizen Potawatomi Nation, 1601 S. Gordon Cooper Drive, Shawnee, OK 74801	750,000
Delaware Tribe of Oklahoma, 220 N.W. Virginia Ave., Bartlesville, OK 74003	750,000
Iowa Tribe of Oklahoma, RR1, Box 721, Perkins, OK 74059	409,376
Kialeegee Tribal Town, P.O. Box 332, Wetumka, OK 74883	313,790
Muscogee Creek Nation, P.O. Box 580, Okmulgee, OK 74447	750,000
Osage Tribe, 627 Grandview, Pawhuska, OK 74056	600,000
Ottawa Tribe of Oklahoma, P.O. Box 110, Miami, OK 74355	750,000
Ponca Tribal Business Committee, 20 White Eagle Drive, Ponca City, OK 74601	750,000
Sac & Fox Nation of Oklahoma, Route 2, Box 246, Stroud, OK 74079	750,000
Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, OK 74884	750,000
Seneca-Cayuga Tribe of Oklahoma, P.O. Box 1283, Miami, OK 74355	750,000
Thlopthlocco Tribal Town, P.O. Box 188, Okemah, OK 74859	528,000
Tunica-Biloxi Tribe of Louisiana, P.O. Box 331, Marksville, LA 71351	750,000
Wichita and Affiliated Tribes, P.O. Box 729, Anadarko, OK 73005	749,986
Ak-Chin Indian Reservation, 42507 West Peters & Nall Road, Maricopa, AZ 85239	550,000
Big Valley Rancheria of Pomo and Pit River Indians, 2726, Rancheria Road, Lakeport, CA 95453	550,000

APPENDIX A.—2001 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Blue Lake Rancheria, P.O. Box 428, Blue Lake, CA 95525	550,000
Chemehuevi Indian Tribe, P.O. Box 1976, Chemehuevi Valley, CA 92363	550,000
Colusa Indian Community, 3730 Highway 45, Colusa, CA 95932	550,000
Cortina Indian Rancheria of Wintun Indians, P.O. Box 1630, Williams, CA 95987	120,000
Duck Valley Shoshone-Paiute Tribe, P.O. Box 219, Owyhee, NV 89832	550,000
Duckwater Shoshone Tribe, P.O. Box 140068, Duckwater, NV 89314	270,318
Ely Shoshone Tribe, 16 Shoshone Circle, Ely, NV 89301	550,000
Ft. Bidwell Paiute Indian Community, P.O. Box 129, Ft. Bidwell, CA 96112	536,000
La Posta Band of Diegueno Mission Indians, P.O. Box 1048, Boulevard, CA 91095	549,931
Las Vegas Tribe of Paiute Indians, One Paiute Drive, Las Vegas, NV 89106	550,000
Lone Pine Indian Tribe, P.O. Box 747, Lone Pine, CA 93545	550,000
Los Coyotes Band of Cahuilla Indians, P.O. Box 189, Warner Springs, CA 92086	550,000
Mooretown Rancheria of Maidu Indians, 1 Alverda Drive, Oroville, CA 95966	550,000
Navajo Nation, P.O. Box 9000, Window Rock, AZ 86515	5,000,000
North Fork Rancheria of Mono Indians, P.O. Box 929, North Fork, CA 93643	550,000
Pascua Yaqui Indian Tribe, 7474 South Camino de Oeste, Tucson, AZ 85746	2,500,000
Pinoleville Rancheria of Pomo Indians, 367 North State Street, Suite 204, Ukiah, CA 95482	390,636
Pueblo of Pojoaque, 39 Camino del Rincon, Suite 6, Santa Fe, NM 87501	550,000
Ramona Band of Cahuilla Band of Mission Indians, P.O. Box 391372, Anza, CA 92539	550,000
Redding Rancheria, 2000 Redding Rancheria, Redding, CA 96001	550,000
Reno-Sparks Indian Colony, 98 Colony Road, Reno, NV 89502	550,000
Rincon Band of Luiseno Mission Indians, P.O. Box 68, Valley Center, CA 92082	550,000
Round Valley Indian Tribe, P.O. Box 448, Covelo, CA 95428	522,050
Salt River Pima-Maricopa Indian Community, 10005 East Osborn Road, Scottsale, AZ 85256	2,000,000
San Pasqual Band of Diegueno Mission Indians, P.O. Box 365, Valley Center, CA 92082	550,000
Santa Rosa Band of Cahuilla Mission Indians, 325 North Western Avenue, Hemet, CA 92543	550,000
Santa Ysabel Band of Diegueno Mission Indians, P.O. Box 130, Santa Ysabel, CA 92070	550,000
Sherwood Valley Rancheria of Pomo Indians, 190 Sherwood Hill Drive, Willits, CA 95490	550,000
Smith River Rancheria, 250 North Indian Road, Smith River, CA 95567	550,000
Timbisha Shoshone Tribe, P.O. Box 206, Death Valley, CA 92328	550,000
Torres-Martinez Band of Cahuilla Indians, P.O. Box 1160, Thermal, CA 92274	550,000
White Mountain Apache Tribe, P.O. Box 700, Whiteriver, AZ 85941	2,500,000
Yavapai Apache Nation, P.O. Box 1188, Camp Verde, AZ 86322	550,000
Yurok Tribe of the Hoopa Valley Reservation, 1034 6th Street, Eureka, CA 95501	550,000
Crow Creek Sioux Tribe, P.O. Box 50, Fort Thompson, SD 57339	607,000
Crow Tribe of Montana, P.O. Box 159, Crow Agency, MT 59022,	800,000,
Fort Peck Assiniboine & Sioux Tribe, P.O. Box 1027, Poplar, MT 59255	500,000
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, SD 57548	743,750
Northern Arapaho Tribe, P.O. Box 396, Fort Washakie, WY 82514	735,000
Rocky Boy Chippewa-Cree Tribe, P.O. Box 544, Box Elder, MT 59521	800,000
Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570	800,000
Santee Sioux Tribe, 425 Frazier Avenue North, Suite 2, Niobrara, NE 68760	800,000
Shoshone Tribe of Wind River, P.O. Box 538, Fort Washakie, WY 82514	800,000
Sisseton-Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, SD 57262	800,000
Standing Rock Sioux Tribe, P.O. Box D, Fort Yates, ND 58538	800,000
Turtle Mountain Band of Chippewa Tribe, P.O. Box 900, Belcourt, ND 58316	798,521
Paiute Indian Tribe of Utah, 440 North Paiute Drive, Cedar City, UT 84720	377,230
Ute Mountain Tribe, P.O. Box 248, Towaoc, CO 81334	800,000
Yankton Sioux Tribe, P.O. Box 248, Marty, SD 57361	800,000
Bois Forte Reservation, P.O. Box 16, Nett Lake, MN 55772	500,000
Ho-Chunk Nation, W9814 Airport Road, P.O. Box 667, Black River Falls, WI 54615	500,000
Keweenaw Bay Indian Community, 107 Beartown Road, Baraga, MI 49908	500,000
Lac du Flambeau Band of Lake Superior Chippewa Indians, P.O. Box 67, Lac du Flambeau, WI 54538	500,000
Lac Courte Oreilles Tribal Governing Board, 13394 W. Trepania Road, Hayward, WI 54843	500,000
Little River Band of Ottawa Indians, 375 River Street, Manistee, MI 49660	500,000
Little Traverse Bay Bands of Odawa Indians, 915 Emmet Street—P.O. Box 246, Petoskey, MI 49770	500,000
Menominee Indian Tribe of Wisconsin, P.O. Box 910, Keshena, WI 54135	68,000
Poarch Band of Creek Indians, 5811 Jack Springs Road, Atmore, AL 36502	500,000
Seminole Tribe of Florida, 6300 Stirling Road, Hollywood, FL 33024	500,000
Stockbridge-Munsee Community, N8476 Mo He Con Nuck Road, Bowler, WI 54416	500,000
White Earth Reservation Tribal Council, P.O. Box 418, White Earth, MN 56591	500,000
Colville Confederated Tribes, P.O. Box 5, Coulee Dam, WA 99116	350,000
Shoalwater Bay Indian Tribe, P.O. Box 130, Tokeland, WA 98590	348,000
Quileute Indian Tribe, P.O. Box 279, LaPush, WA	350,000
Confederate Tribes of the Umatillla Reservation, P.O. Box 638, Pendleton, OR 97801	350,000

APPENDIX A.—2001 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Samish Indian Nation, P.O. Box 217, Anacortes, WA 98221	350,000
Skokomish Indian Tribe, N. 100 Tribal Center Road, Shelton, WA 98584	350,000
Spokane Tribe of Indians, P.O. Box 100, Wellipinit, WA 99040	350,000
Quinault Indian Nation, P.O. Box 159, Taholah, WA 98587	350,000
The Suquamish Tribe, P.O. Box 498, Suquamish, WA 98392	282,000
Makah Indian Tribe, P.O. Box 115, Neah Bay, WA 98357	100,000
Confederated Tribes of Warm Springs, P.O. Box C, Warm Springs, OR 97761	350,000
Snoqualmie Tribe, P.O. Box 670, Fall City, WA 98024	350,000
Lummi Indian Business Council, 2616 Kwina Road, Bellingham, WA 98226	285,664
Iqurmiut Tribal Council, P.O. Box 9, Russian Mission, AK 99657	230,000
Shageluk IRA Tribal Council, P.O. Box 35, Shageluk, AK 99665	250,000
Pilot Station Native Village, P.O. Box 5119, Pilot Station, AK 99650	215,000
Native Village of Nanwalek, P.O. Box 8065, Nanwalek, AK 99603–6665	500,000
Seldovia Village Tribe, P.O. Drawer L, Seldovia, AK 99663	500,000
Native Village of Elim, P.O. Box 39070, Elim, AK 99739	500,000
Qagan Tayagungin Tribe, Box 447, Sand Point, AK 99661	500,000
Unga Tribe, Box 508, Sand Point, AK 99661	500,000
Native Village of Mekoryuk, P.O. Box 66, Mekoryuk, AK 99630	469,593
Tanacross Village Council, P.O. Box 76009, Tanacross, AK 99776	500,000
Valdez Native Tribe, P.O. Box 1108, Valdez, AK 99686	500,000
Tetlin, P.O. Box TTL, Tetlin, AK 99779	500,000
Venetie Village Council, P.O. Box 81119, Venetie, AK 99781	500,000

[FR Doc. 02–20394 Filed 8–12–02; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4724–FA–02]

Announcement of Funding Awards for Fiscal Year 2002; Urban Scholars Fellowship Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with the Department of Housing and Urban Development Reform Act of 1970, Title V, this document notifies the public of funding awards for the Fiscal Year 2002 Urban Scholars Fellowship Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to attract scholars with recent Ph.D.'s and academic appointments at institutions of higher education to undertake research now, and throughout their careers, on research topics of interest to HUD.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, Office of University Partnerships, Department of Housing and Urban Development, Room 8106, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3061, extension 3852. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on (800) 877–8399, or 202–708–1455. (Telephone numbers, other than the two ''800'' numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The Urban Scholars Fellowship Program is administered by the Office of University Partnerships under the Assistant Secretary for Policy Development and Research. The Office of University Partnerships administers HUD's ongoing grant programs to institutions of higher education and creates initiatives which colleges and universities can bring their traditional missions of teaching, research, service, and outreach to bear on the pressing local problems in their communities.

Eligible applicants include only Ph.D.'s who have an academic appointment at an institution of higher education and have received their Ph.D. no earlier than January 1, 1997. The Urban Scholar Fellowship Program provides each participating scholar $55,000 for expenses such as salary for two summers, graduate assistants to work on the research project, partial cost of paying for replacements to cover a reduced course load, computer software, the purchase of data, and travel expenses to collect data and make presentations at meetings.

The Catalog of Federal Domestic Assistance number for this program is 14.518.

On May 1, 2002 (67 FR 21970), HUD published a Notice of Funding Availability (NOFA) announcing the availability of $550,500 in carryover FY 2001 funds for the Urban Scholars Fellowship Program. The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications announced below, and in accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth below.

List of Awardees for Grant Assistance Under the FY 2002 Urban Scholars Fellowship Program Funding Competition, by Name, Institution, Grant Amount and Research Topic

New England

1. Dr. Brian Jacob, Harvard University, $55,000. The Effects of Housing Vouchers on Low-Income Families: Evidence from a Randomized Lottery for Section 8 Vouchers.

Mid-Atlantic

2. Dr. Angela Foster, University of Pittsburgh, $55,000. The Path to Home Ownership: Racial Difference in the Home Ownership Process.

3. Dr. Amy Hillier, University of Pennsylvania, $55,000. Searching for Red Lines: A GIS and Spatial Statistical Analysis of Mortgage Discrimination.

Midwest

4. Dr. Lincoln Quillian, University of Wisconsin—Madison, $55,000. Sources of the Spatial Concentration of Poverty in U.S. Metropolitan Areas.

5. Dr. Rachel Weber, University of Illinois-Chicago, $55,000. The Impact of Tax Increment Financing on Residential Property Values.

Southwest

6. Dr. Nathan Berg, University of Texas-Dallas, $55,000. Perceptions and Housing Prices: A Longitudinal Case Study of Scattered-Site Public Housing in North Dallas.

7. Dr. James Elliott, Tulane University, $55,000. Immigrant Redistribution and Adaptation through Gateway Cities.

8. Dr. Cecilia Giusti, Texas A&M University, $55,000. Microbusinesses in the Texas-Mexico Border Region: Potential for Economic Community Development.

Northwest/Alaska

9. Dr. Rachel Garshick Kleit, University of Washington, $55,000. HOPE VI New Communities: Mapping Relationships in Mixed-Income Housing.

Dated: August 2, 2002.

Harold Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–20395 Filed 8–12–02; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CA–660–1430–ER–CACA–44491]

Proposed Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Imperial Irrigation District's Proposed New California Desert Southwest Transmission Line Project, California

AGENCY: Bureau of Land Management (BLM) and the Imperial Irrigation District (IID).

ACTION: Notice of intent to prepare a joint EIS/EIR addressing a proposed 230 or 500kV transmission line project and possible California Desert Conservation Area (CDCA) Plan Amendment.

SUMMARY: In compliance with regulations at 40 CFR 1501.7 and 43 CFR 1610.2, notice is hereby given that the BLM, together with the IID, propose to prepare a joint EIS/EIR for the IID's proposed 230 or 500 kilovolt (kV) ''California Desert Southwest'' Transmission Line Project. The BLM is the lead Federal agency for the preparation of this EIS/EIR in compliance with the requirements of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations for implementing NEPA (40 Code of Federal Regulations [CFR] 1500–1508), and the Department of the Interior's manual guidance on NEPA; and the IID is the lead State of California agency for the preparation of this EIS/EIR in compliance with the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et seq*), and implementing guidelines (California Code of Regulations [CCR] Title 14, Section 15000 *et seq*), and IID's rules and regulations to implement CEQA. This notice initiates the public participation process for planning, initiates public scoping for the EIS and also serves as an invitation for other cooperating agencies. Potential cooperating agencies include the U.S. Fish and Wildlife Service, Western Area Power Administration, the Department of Defense, the State Historic Preservation Officer, and the California Department of Fish and Game.

DATES: For scoping meetings and comments: Two public scoping meetings will be held during 2002 on the following dates:

1. August 14, from 7–9 p.m., at the Blythe City Council Multipurpose Room, Blythe, CA.

2. August 15, from 7–9 p.m., at the IID Board Room, La Quinta, CA.

Written comments must be postmarked no later than 30 days from the date of this notice in order to be included in the draft EIS/EIR. Please submit any comments to the address listed below.

ADDRESSES: Written comments should be addressed to Mr. James G. Kenna—Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, PO Box 581260, North Palm Springs, California 92258–1260.

The meeting locations are:

1. Blythe City Council Multipurpose Room, 235 N. Broadway, Blythe, CA.

2. Imperial Irrigation District, 81–600 Ave. 58, La Quinta, CA.

FOR FURTHER INFORMATION CONTACT: John Kalish, Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Ave, PO Box 581260, North Palm Springs, California 92258–1260, (760) 251–4849.

SUPPLEMENTARY INFORMATION: The Imperial Irrigation District (IID) is a community owned utility providing power to more than 90,000 customers in Imperial County and parts of Riverside and San Diego Counties, all in California. The IID is experiencing an increase in electrical demand at an estimated rate of 20 to 30 megawatts annually. In an effort to meet electrical power demand, the IID is proposing to construct a 230 or 500 kilovolt (kV) electrical transmission line located parallel and adjacent to Interstate Highway 10 between North Palm Springs and Blythe, California, a distance of approximately 118 miles. The proposed Project will operate at either 230-kV or 500-kV and will provide increased transmission line capabilities from the existing Devers substation at North Palm Springs, to the proposed Hobsonway substation located west of Blythe.

The proposed transmission line is located within the designated Utility Corridor ''H'' under the California Desert Conservation Area (CDCA) Plan of 1980, as amended. This utility Corridor directly parallels Interstate Highway 10. An amendment to the CDCA Plan would be required if an alternative to this proposed project, analyzed in the EIS/EIR, is ultimately chosen that is not within one of the 16 utility corridors designated in the CDCA Plan. The CDCA Plan states that new utility needs which do not conform to the adopted corridor system will be processed by means of a Plan Amendment in conjunction with necessary permit hearings required by other agencies. Under the CDCA Plan, the BLM may either authorize installation of a 161kV or larger transmission line within existing utility corridors, deny the proposed project or amend the CDCA Plan to accommodate an alternative alignment that is outside of existing designated utility corridors. Any proposed amendments to the CDCA Plan would be analyzed in this EIS/EIR.

BLM has identified a preliminary list of issues which will need to be addressed in this analysis. Members of the public are invited to identify additional issues and concerns to be addressed. The preliminary list of issues includes potential impacts to the habitat of species listed under the Endangered Species Act (ESA) of 1973, as amended, including the desert tortoise, Coachella Valley fringed toed lizard, Coachella Valley milkvetch, as well as to several BLM administered areas including the Coachella Valley Preserve, Alligator Rock Area of Critical Environmental Concern (ACEC), Chuckwalla Valley Dune Thicket ACEC and Camp Young of the WWII Desert Training Center, California-Arizona Maneuver Area.

Planning criteria (43 CFR 1610.4–2) are parameters, generally based on applicable law, which guide development of a plan amendment to ensure the planning process is tailored to the issues and unnecessary data collection is avoided. The BLM has put together the following preliminary list of planning criteria and also invites the public to provide written comments on these criteria.

1. The Proposed Northern and Eastern Colorado Desert (NECO) Plan/Final EIS and the draft California Desert Conservation Area (CDCA) Plan Amendment for the Coachella Valley/EIS shall be considered to ensure that there are no inconsistencies between either of these plans and the IID proposal. This is critical as these plans

are being prepared to address the recovery of Federally listed species under the ESA.

2. The IID proposal itself will be subject to Section 7 consultation in accordance with the ESA to address potential impacts to listed species, including cumulative impacts.

The planning process and environmental review analysis for a CDCA Plan Amendment shall be conducted from an interdisciplinary perspective to ensure all issues are adequately addressed. At a minimum, input shall be sought from the following disciplines: biological resources, cultural resources, visual resource management, recreation, wilderness and lands and realty.

Interested members of the public are now invited to participate in a NEPA scoping process, and are requested to help identify new issues or concerns and alternatives to be considered related to this proposed Project. Written comments must be submitted no later than 30 days from the date of this notice to ensure that your comments are included in the draft EIS/EIR. When available, the public will be provided a 60-day public review period on the draft EIS/EIR and a 30-day protest period on the final EIS/EIR. These documents will be made available on the Internet at BLM's Web site: *www.ca.blm.gov* and at local public libraries in the cities of Blythe, Niland, La Quinta and Palm Springs, California. Contact the BLM if you would like to be included in the mailing list to receive copies of all public notices relevant to this project.

James G. Kenna,

Field Manager.

[FR Doc. 02–20418 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1430–ES; N–61871]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Segregation terminated, recreation and public purposes lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on July 23, 1997 under serial number N–61855. The exchange segregation on the subject land will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for an elementary school.

Mount Diablo Meridian, Nevada,

T. 19 S., R. 60 E.,

sec. 7, a portion of lot 5, generally known as W½NE¼NE¼, W½E½NE¼NE¼.

Approximately 30.0 acres.

The school is located near N. Fort Apache Road and Iron Mountain Road.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for water line purposes which have been granted to the Las Vegas Valley Water District by Permit No. N–62751 under the Act of October 21, 1976(43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV, or by calling (702) 515–5088. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the land to the Las Vegas Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an elementary school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor directly related to the suitability of the land for an elementary school. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, these realty actions will become the final determination of the Department of the Interior. The classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/conveyance until after the classification becomes effective.

Dated: July 12, 2002.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 02–20419 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents. Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas

activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200-GULF.

SUPPLEMENTARY INFORMATION: MMS prepares an SEA and FONSI for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA examines the potential environmental effects of activities described in the proposals and presents MMS conclusions regarding the significance of those effects.

Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Chevron U.S.A. Production Company, Initial Development Operations and Pipeline Bundle Activity, SEA Nos. N–7217, P–13720, P–13721 and P–13722.	Viosca Knoll Area, Blocks 384 and 340, Leases OCS–G 16541 and 10933, located 38.5–40.8 miles south of Mobile County, Alabama.	03/29/02
Freeport McMoran Sulphur, L.L.C., Structure Removal Activity, SEA Nos. ES/SR 02–010, 02–011, 02–012, 02–13, 02–014, 02–015, 02–016, 02–017, 02–018, 02–019 and 02–020.	Grand Isle Area, Block 17, Lease OCS–G 00025, located 5.5 miles southeast of Jefferson Parish, Louisiana, and 54 miles southeast of Houma, Louisiana.	03/14/02
Nippon Oil Exploration U.S.A. Limited, Structure Removal Activity, SEA No. ES/SR 02–021.	West Cameron (West Addition) Area, Block 407, Lease OSC–G 15089, located 63 miles south-southwest of Cameron, Louisiana, and 70 miles south-southeast of Cameron, Louisiana.	03/12/02
Samedan Oil Corporation, Structure Removal Activity, SEA Nos. ES/SR 02–022, 02–023 and 02–024.	Eugene Island Area, Block 56, Lease OCS–G 03780, located 8 miles east-southeast of Terrebonne Parish, Louisiana, and 57 miles southeast of Intracoastal City, Louisiana.	03/12/02
El Paso Production Company, Structure Removal Activity, SEA Nos. ES/SR 02–025, 02–026 and 02–027.	Viosca Knoll Area, Block 121, Lease OCS–G 14595; East Cameron Area, Block 188, Lease OCS–G 13586; East Cameron Area, Block 193, Lease OCS–G 08651; located 22 miles south of Mobile County, Alabama, and 43 miles south of Theodore, Alabama; and 56–58 miles south-southwest of Cameron Parish, Louisiana, and 73–75 miles south-southeast of Cameron, Louisiana, respectively.	03/28/02
Samedan Oil Corporation, Structure Removal Activity, SEA No. ES/SR 02–028.	Vermilion Area, Block 100, Lease OCS–G 15174, located 27 miles south of Vermilion Parish, Louisiana, and 47 miles southwest of Intracoastal City, Louisiana.	04/16/02
Williams Field Services-Offshore Gathering Company, Structure Removal Activity, SEA No. ES/SR 02–029.	High Island Area, Block A–69, Lease OCS–G 06187, located 43 miles southeast of Galveston and Galveston County, Texas.	04/18/02
El Paso Production Company, Structure Removal Activity, SEA No. ES/SR 02–030.	High Island Area (East Addition South Extension), Block A–313, Lease OCS–G 02410, located 104 miles south of Cameron Parish, Louisiana, and 110 miles south-southwest of Cameron, Louisiana.	04/22/02
Pioneer Natural Resources USA, Inc., Structure Removal Activity, SEA No. ES/SR 02–031.	Vermilion Area (South Addition), Block 348, Lease OCS–G 02271, located 93 miles south of Vermilion Parish, Louisiana, and 111 miles south-southwest of Intracoastal City, Louisiana.	04/22/02
El Paso Production Company, Structure Removal Activity, SEA Nos. ES/SR 02–032 and 02–033.	High Island Area (East Addition South Extension), Block A–314, Lease OCS–G 08570, located 106 miles south of Cameron Parish, Louisiana, and 11 miles south-southwest of Cameron, Louisiana.	04/22/02
Samedan Oil Corporation, Structure Removal Activity, SEA No. ES/SR 02–034.	South Pass Area, Block 47, Lease OCS–G 09695, located 27 miles southeast of Venice, Louisiana, and 4 miles south of Plaquemines Parish, Louisiana.	04/15/02
Devon Production Company, L.P., Structure Removal Activity, SEA No. ES/SR 01–038A.	Eugene Island Area (South Addition), Block 305, Lease OCS–G 02108, located 63 miles southwest of Terrebonne Parish, Louisiana, and 109 miles southeast of Intracoastal City, Louisiana.	04/18/02
Hall-Houston Oil Company, Structure Removal Activity, SEA No. ES/SR 01–072A.	West Delta Area, Block 94, Lease OCS–G 00839, located 25 miles southeast of LaFourche Parish, Louisiana, and 29 miles southeast of Fourchon, Louisiana.	05/02/02
Chevron U.S.A., Inc., Structure Removal Activity, SEA Nos. ES/SR 02–035, 02–036 and 02–037.	Ship Shoal Area, Block 108, Lease OCS–G 00814; Ship Shoal Area, Block 170, Lease OCS–G 03584; South Marsh Area, Block 61, Lease OCS–G 01196; located 17 miles southwest of Terrebonne Parish, Louisiana, and 89 miles southeast of Intracoastal City, Louisiana; 28 miles southwest of Terrebonne Parish, Louisiana, and 101 miles southeast of Intracoastal City, Louisiana; and 49 miles south of Iberia Parish, Louisiana, and 78 miles south southeast of Intracoastal City, Louisiana, respectively.	05/09/02
Pioneer Natural Resources USA, Inc., Structure Removal Activity, SEA Nos. ES/SR 02–038, 02–039 and 02–040.	West Delta Area, Block 61, Lease OCS–G 03186; Ship Shoal Area, Block 115, OCS–G 02619; located 14 miles west northwest of Plaquemines Parish, Louisiana, and 162 miles southeast of Intracoastal City, Louisiana; and 14 miles south of Terrebonne Parish, Louisiana, and 106 miles southeast of Intracoastal City, Louisiana, respectively.	05/09/02

Activity/Operator	Location	Date
Walter Oil & Gas Corporation, Structure Removal Activity, SEA No. ES/SR 02–041.	Eugene Island Area, Block 72, Lease OCS–G 10720, located 21 miles south-southeast of Iberia Parish, Louisiana, and 93 miles west of Fourchon, Louisiana.	05/17/02
Devon Energy Production Co., L.P., Structure Removal Activity, SEA No. ES/SR 02–042.	South Marsh Island (North Addition) Area, Block 256, Lease OCS–G 04112, located 16 miles south-southwest of Iberia Parish, Louisiana, and 42 miles south-southeast of Intracoastal City, Louisiana.	05/14/02
Unocal Corporation, Structure Removal Activity, SEA No. ES/SR 02–043.	Mobile Area, Block 829, Lease OCS–G 06844, located 5 miles south of Baldwin County, Alabama, and 29 miles southeast of Theodore, Alabama.	05/20/02
Taylor Energy Company, Structure Removal Activity, SEA No. ES/SR 02–044.	Matagorda Island Area, Block 665, Lease OCS–G 03464, located 12 miles southeast of Calhoun County, Texas, and 31 miles east-northeast of Harbor Island, Texas.	05/20/02
El Paso Production, Structure Removal Activity, SEA No. ES/SR 02–045.	Main Pass (South & East Addition) Area, Block 198, Lease OCS–G 13659, located 42 miles southeast of Chandeleur Islands, and 72 miles south of Theodore, Alabama.	05/29/02
Prime Natural, Resources, Inc. Structure Removal Activity, SEA No. ES/SR 02–046.	High Island Area (East Addition), Block 130, Lease OCS–G 14883, located 29 miles south of Jefferson County, Texas, and 34 miles south of Sabine Pass, Texas.	06/11/02
El Paso Production, Structure Removal Activity, SEA Nos. ES/SR 02–047, 02–048 and 02–049.	High Island Area (East Addition South Extension), Block A–313, Platform A, Lease OCS–G 02410; High Island Area (East Addition South Extension), Block A–349, Platform B, Lease OCS–G 02743; and High Island Area (South Addition), Block A–497, Platform A, Lease OCS–G 06231; located (Platform A) 102 miles south of Jefferson County, Texas, and 111 miles south of Cameron Parish, Louisiana, (Platform B) 115 miles south of Cameron Parish, Louisiana, and 117 miles south of Cameron, Louisiana, and (Platform A) 88 miles southeast of Galveston County, Texas, and 119 miles south-southwest of Cameron, Louisiana, respectively.	06/10/02
Newfield Exploration Company, Structure Removal Activity, SEA Nos. ES/SR 02–050, 02–051, 02–052, 02–053, 02–054 and 02–055.	Ship Shoal Area, Block 69, Lease OCS–G 03577, Caissons 7, 8, 9, 10, 11 and 13, located approximately 6 miles south of Terrebonne Parish, Louisiana, and 98 miles southeast of Intracoastal City, Louisiana.	05/31/02
El Paso Production, Structure Removal Activity, SEA No. ES/SR 02–056.	High Island Area (East Addition South Extension), Block A–271, Lease OCS–G 06245, located 85 miles south of Jefferson County, Texas, and 95 miles south-southwest of Cameron, Louisiana.	06/12/02
Maritech Resources, Inc., Structure Removal Activity, SEA Nos. ES/SR 02–057 and 02–058.	Main Pass (South and East Addition), Block 187, Lease OCS–G 08756, located 37 miles east-southeast of Chandeleur Islands, and 65 miles east-northeast of Venice, Louisiana.	06/14/02
Apache Corporation, Structure Removal Activity, SEA No. ES/SR 02–059.	West Cameron Area, Block 199, Lease OCS–G 14319, located 29 miles south-southwest of Cameron Parish, Louisiana, and 52 miles southeast of Sabine Pass, Louisiana.	06/13/02
McMoran Oil & Gas, Structure Removal Activity, SEA No. ES/SR 02–061.	Vermilion Area, Block 144, Lease OCS–G 03125, located 40 miles south of Vermilion Parish, Louisiana, and 58 miles southwest of Intracoastal City, Louisiana.	06/14/02
El Paso Production, Structure Removal Activity, SEA No. ES/SR 02–062.	High Island Area (East Addition South Extension), Block A–330, Lease OCS–G 02421, located 11 miles south-southeast of Jefferson County, Texas, and 115 miles south-southwest of Cameron, Louisiana.	06/10/02
Energy Resource Technology, Inc., Structure Removal Activity, SEA Nos. ES/SR 02–063 and 02–064.	Vermilion Area, Block 147, Lease OCS–G 02071, located 37 miles south of Vermilion Parish, Louisiana, and 85 miles west-southwest of Morgan City, Louisiana.	06/14/02
Newfield Exploration Company, Structure Removal Activity, SEA No. ES/SR 02–065.	Viosca Knoll Area, Block 209, Lease OCS–G 08744, located 29 miles south of Bladwin County, Alabama, and 88 miles northeast of Venice, Louisiana.	06/17/02
Westport Resources Corporation, Structure Removal Activity, SEA No. ES/SR 02–066.	Eugene Island Area, Block 85, OCS–G 16347, located 19 miles southeast of Terrebonne Parish, Louisiana, and 80 miles west of Fourchon, Louisiana.	06/17/02
Williams Energy Services, Structure Removal Activity, SEA No. ES/SR 02–067.	Mustang Island Area, Block 803, Lease OCS–G 17076, located 22 miles southeast of Nueces County, Texas, and 24 miles southeast of Habor Island, Texas.	06/17/02
Fairways Specialty Sales & Service, Inc., Structure Removal Activity, SEA No. ES/SR 02–068.	High Island (South Addition) Area, Block A–511, Lease OCS–G 02694, located 77 miles southeast of Brazoria County.	06/19/02
Walter Oil & Gas Corporation, Structure Removal Activity, SEA No. ES/SR 02–069.	Brazos Area, Block 572, Lease OCS–G 10228, located 24 miles southeast of Matagorda County, Texas, and 60 miles southwest of Freeport, Texas.	06/19/02
Pioneer Natural Resources, Structure Removal Activity, SEA No. ES/SR 02–NG1.	Brazos Area, Block A–7, Lease OCS–G 04558, located 32 miles southeast of Matagorda County, Texas, and 56 miles east of Port O'Connor, Texas.	06/10/02

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: July 8, 2002.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 02–20438 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Albuquerque Drinking Water Project, NM

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Extension of Public Comment Period for Thirty Days.

SUMMARY: Notice is hereby given that the comment period for the Draft Environmental Impact Statement (DEIS) for the City of Albuquerque Drinking Water Project is extended an additional 30 days to September 12, 2002.

DATES: The end of the public comment period, as noted in the **Federal Register** (67 FR 40961) on June 14, 2002, was August 13, 2002. The public comment period is now extended to September 12, 2002.

ADDRESSES: Written comments on the DEIS should be addressed to Lori Robertson, Bureau of Reclamation, Albuquerque Area Office, 505 Marquette, NW., Suite 1313, Albuquerque, New Mexico 87102; faxogram (505) 248–5356; e-mail: *lrobertson@uc.usbr.gov.* Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Lori Robertson, Environment and Lands Division Manager, (505) 248–5326.

Dated: August 1, 2002.

Shelly Wiser,

Acting Regional Director.

[FR Doc. 02–20429 Filed 8–12–02; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406]

Certain Lens-Fitted Film Packages, Consolidated Enforcement and Advisory Opinion Proceedings; Notice of Review-in-Part, Nonreview-in-Part, and Remand of Enforcement Initial Determination and Initial Advisory Opinion to the Presiding Administrative Law Judge

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part and remand to the presiding administrative law judge (ALJ) the initial advisory opinion (IAO) and the enforcement initial determination (EID) issued by the ALJ on May 2, 2002, in the above-captioned proceedings under section 337 of the Tariff Act as amended, 19 U.S.C. 1337. Specifically, the Commission determined to review and remand to the ALJ an issue of infringement under the doctrine of equivalents in view of the Supreme Court's decision in *Festo Corp.* v. *Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.,* 122 S.Ct. 1831 (May 28, 2002). The Commission determined not to review the remainder of the IAO and EID.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, *Esq.,* telephone 202–205–3104, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol.public.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission's original investigation in this matter was terminated on June 2, 1999, with a finding of violation of section 337 by 26 respondents by reason of importation or sales after importation of certain lens-fitted film packages (LFFPs) (*i.e.,* disposable cameras) that were found to infringe one or more claims of 15 patents held by complainant Fuji Photo Film Co. (Fuji). 64 FR 30541 (June 8, 1999). The Commission issued a general exclusion order, prohibiting the importation of LFFPs that infringe any of the claims at issue, and issued cease and desist orders to twenty domestic respondents. Id. Three respondents appealed the part of the Commission's determination that concerned refurbished LFFPs to the U.S. Court of Appeals for the Federal Circuit. No party appealed the Commission's determinations concerning newly-manufactured LFFPs.

On June 27, 2001, Fuji filed a ''Complaint for Enforcement Proceedings Under Rule 210.75, Petition for Modification Under Rule 210.76 and/or Request for Advisory Opinion Under Rule 210.79.'' Fuji's enforcement complaint asserted 22 claims contained in nine utility patents and named twenty entities as respondents. Fuji later withdrew its complaint as to three of the respondents. Fuji's complaint concerns only newly-manufactured cameras that were not the subject of the appeal to the Federal Circuit. On July 31, 2001, the Commission instituted advisory opinion and enforcement proceedings and referred them to the presiding ALJ for issuance of a separate initial advisory opinion (IAO) and enforcement initial determination (EID). 63 FR 40721 (August 3, 2002).

On May 2, 2002, the ALJ issued his IAO and EID in which he made 59 separate infringement determinations involving seven patents and 13 respondents and 28 different types of accused LFFP. Eight petitions for review of the IAO and/or EID were filed on May 16, 2002. Responses were filed on May 24, 2002. On June 7, 2002, Fuji filed a supplemental brief concerning the application of intervening Supreme Court precedent. Responses to Fuji's motion were filed on June 19 and June 24, 2002, by the Commission investigative attorneys (IAs) and respondent Vastfame Camera Ltd., respectively.

The Commission, having examined the petitions for review and the responses thereto, determined to review the findings of the IAO and EID on the issue of infringement of claim 9 of U.S. Letters Patent 4,972,649 in view of the Supreme Court decision, *Festo Corp.* v. *Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.,* 122 S.Ct. 1831, which was handed down after the IAO and EID were issued. The Commission has determined not to review any other part of the IAO or EID.

In connection with final disposition of the enforcement proceedings, the Commission may issue cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of lens fitted film packages. If the Commission contemplates issuance of cease and desist orders, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with

those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission issues cease and desist orders, the conduct prohibited by any cease and desist order may be continued during the sixty (60) day period in which the cease and desist orders are under review by the President pursuant to subsection (j) of section 337, 19 U.S.C. 1337(j). During this period, the subject articles would be entitled to be sold under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

The Commission may also levy civil penalties for violations of cease and desist orders that it issued at the completion of the Lens-Fitted Film Packages investigation.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the recommended remedy determinations made by the ALJ in the EID that issued on May 2, 2002, including the ALJ's recommendations with regard to civil penalties. Complainant and the Commission investigative attorneys are also requested to submit proposed cease and desist orders for the Commission's consideration. The written submissions and proposed cease and desist orders must be filed no later than close of business on August 28, 2002. Response submissions must be filed no later than the close of business on September 6, 2002. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's rules of practice and procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.75 and 210.79 of the Commission's rules of practice and procedure (19 CFR 210.75 and 210.79).

By order of the Commission.

Issued: August 7, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–20430 Filed 8–12–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–024]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 22, 2002 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.

2. Minutes.

3. Ratification List.

4. Inv. No. 731–TA–1013 (Preliminary) (Saccharin from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before August 26, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before September 3, 2002.).

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 9, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–20577 Filed 8–9–02; 11:52 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services: Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day notice of Information Collection Under Review: Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired, Regional Community Policing Institute Quarterly Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 73, page 18636 on April 16, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 12, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Regional Community Policing Institute Quarterly Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: COPS 022/01. Office of Community Oriented Policing Services, Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Other: None. Abstract: This information collection requests information required to monitor the progress and use of funds by the Regional Community Policing Institutes through the one-year cooperative agreements to provide training and technical assistance to COPS grantees and other participants in the area of community-oriented policing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 32 respondents. The amount of estimated time required for the average respondent to respond is 11.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 1,472 hours associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 7, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–20439 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Policing Services: Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day notice of Information Collection Under Review: New Technology Initiative Grant Application Kit

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 99, page 36023 on May 22, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 12, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Technology Initiative Grant Application Kit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: none. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local law enforcement entities. Other: None. Abstract: The information collected by the Technology Initiative Grant Application Kit is requested to obtain a comprehensive understanding of project objectives in accordance with the Federally appropriated mandate and grant program policies of the COPS Office.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is 25 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are estimated 5,200 annual burden hours associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 7, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–20442 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Auto Body Consortium, Inc.—''Hot Metal Gas Forming'' (''HMGF'')

Notice is hereby given that, on July 19, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Auto Body Consortium, Inc.—''Hot Metal Gas Forming'' (''HMGF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Antarum Institute, Ann Arbor, MI has merged with Auto Body Consortium, Inc., Ann Arbor, MI and assumed its membership in the venture. Also, Temper Incorporated, Rockford, MI has been added as a party to this venture. In addition, Tower Automotive, Milwaukee, WI and Troy Design and Manufacturing, Medford, MI have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Auto Body Consortium, Inc.—''Hot Metal Gas Forming'' (''HMGF'') intends to file additional written notification disclosing all changes in membership.

On December 21, 1998, Auto Body Consortium, Inc.—''Hot Metal Gas Forming'' (''HMGF'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 18, 1999 (64 FR 8124).

The last notification was filed with the Department on March 8, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2002 (67 FR 16124).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20408 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on June 26, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Carnegie Mellon University, Pittsburgh, PA; Massachusetts Institute of Technology, Cambridge, MA; The Boeing Company, St. Louis, MO; and UK eUniversities Worldwide Limited, London, England, UNITED KINGDOM have been added as parties to this venture. Also, Central Software, Lexington, MA; and Epic Group, Brighton, England, UNITED KINGDOM have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on March 23, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 30, 2002 (67 FR 21271).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20413 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I)

Notice is hereby given that, on June 13, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the ''Act''), the International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–134a (IPACT–I) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission announcing the termination of IPACT–I, effective June 30, 2002.

Although membership in IPACT–I is no longer open, the data that IPACT–I generated on HFA–134a will continue to be available through a cost-sharing license.

On August 7, 1990, IPACT–I filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990 (55 FR 36710).

The last notification was filed with the Department on July 6, 2000. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 10, 2000 (65 FR 60212).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20414 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—International Pharmaceutical Aerosol Consortium for Toxicology Testing of HFA–227 (IPACT–II)

Notice is hereby given that, on June 13, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the ''Act''), the International Pharmaceutical Aerosol Consortium for Toxicolgy Testing of HFA–227 (IPACT–II) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission announcing the

termination of IPACT–II, effective April 30, 2001.

Although membership in IPACT–II is no longer open, the data that IPACT–II generated oin HFA–227 will continue to be available through a cost-sharing license.

On February 21, 1991, IPACT–II filed its original notification pursuant to 15 U.S.C. 4305(a). The Department of Justice published a notice in the **Federal Register** pursuant to 15 U.S.C. 4305(b) on April 2, 1991 (56 FR 13489).

The last notification was filed with the Department on March 15, 2000. The Department of Justice published a notice in the **Federal Register** pursuant to 15 U.S.C. 4305(b) on August 17, 2000 (65 FR 20218).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20416 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation (''POSC'')

Notice is hereby given that, on May 10, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Petrolink, Houston, TX; Paradigm Geophysical Ltd., Houston, TX; Pioneer Natural Resources, Irving, TX; and OFS Protal LLC, Houston, TX have been added as parties to this venture.

No other changes have been made in either the membership of planned activity of the group research project. Membership in this group research project remains open, and Petrotechnical Open Software Corporation (''POSC'') intends to file additional written notification disclosing all changes in membership.

On January 12, 1991, Petrotechnical Open Software Corporation (''POSC'') filed its original notification pursuant to Section 6(a) of the Act, The Department of Justice published a notice in **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on March 14, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 18, 2002 (67 FR 19253).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20407 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation (''POSC'')

Correction

Notice Document 02–15240, relating to notice pursuant to the National Cooperative Research and Production Act of 1993 for Petrotechnical Open Software Corporation (''POSC''), appearing on page 41484 in the issue of Tuesday, June 18, 2002, in the first column is retracted.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20410 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on July 22, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Inland Cement Limited, Edmonton, Alberta, CANADA has changed its name to Lehigh Inland Cement Limited; Krup Polysius Corp., Atlanta, GA (an Associate Member) has changed its name to Polysius Corp.; BMH Americans, Dallas, TX (an Associate Member) has changed its name to Claudius Peters (Americas); and Baker Refractories, York, PA (an Associate Member) has changed its name to LWB Refractories.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on March 5, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2002 (67 FR 16124).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20411 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on July 3, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Subramanyam Mallela (individual member), Austin, TX; and William A. Rhodes (individual member), Knoxville, TN have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice

published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on February 6, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2002 (67 FR 10761).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20417 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Equipment and Materials International (''SEMI'')

Notice is hereby given that, on July 3, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Equipment and Materials International (''SEMI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Asyst Technologies, Inc., Fremont, CA acquired Domainlogix, Austin, TX and has changed its name to Asyst Connectivity Technologies, Inc., Austin, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SEMI intends to file additional written notification disclosing all changes in membership.

On January 8, 2002, SEMI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2002 (67 FR 10762).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20415 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on July 12, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ARC International PLC, Nashua, NH; Beijing Hongsi Electronic Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Himanshu Dwivedi (individual member), San Francisco, CA; Robert Helt (individual member), Moraga, CA; Dr. Rabi Mahapatra (individual member), College Station, TX; Seijiro Moriyama (individual member), Yokohama, JAPAN; Prosilog SA, Cergy-Prefectire. FRANCE; TTChip Entwicklungsges.m.b.H., Vienna, AUSTRIA; University of Kitakyushu, Dept. of Information & Media Sciences, Kitakyusha-shi, JAPAN; and Vast Systems Technology, Sunnyvale, CA have been added as parties to this venture.

Also, Adaptive Silicon, Inc., Lost Gatos, CA; Alcatel Internetworking (PE), Inc., Spokane, WA; Altera Corporation, San Jose, CA; Arc Cores Ltd., San Jose, CA; Patrick Beauvillard (individual member), Saint Lambert des Bois, FRANCE; BOPS, Inc., Chapel Hill, NC; Easics NV, Leuven, BELGIUM; HCL Technologies India Pvt. Ltd., Chennai, INDIA; IDEC–IC Design Education Center, Taejon, REPUBLIC OF KOREA; Logic Research Corporation, Fukuoka-shi, JAPAN; Memec Core, Raleigh, NC; MystiCom Ltd, Netanya, ISRAEL; Nazomi Communications, Inc., Santa Clara, CA; Nogatech Ltd., Kfar-Saba, ISRAEL; Palmchip, San Jose, CA; Qualis Design Corporation, Lake Oswego, OR; RealChip, Sunnyvale, CA; Tensilica, Inc., Santa Clara, CA; and Virtual Silicon Technology, Inc., Sunnyvale, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on April 16, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 29, 2002 (67 FR 37441).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20412 Filed 8–12–02 8:45am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—XtremeSpectrum Inc.

Notice is hereby given that, on July 23, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), XtremeSpectrum Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are XtremeSpectrum Inc., Vienna, VA; and Motorola Inc., Schaumburg, IL. The nature and objectives of the venture are cooperative research to develop a Fireground Personnel Location & Communication System.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–20409 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; INS case status service online.

The Department of Justice, Immigration and Naturalization Service

has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 and the Privacy Act of 1974 as amended, and Pub. L. 93–589.

INS now provides case status to individuals and their representatives by request through an INS toll phone line or walk-in at INS local offices. INS proposes to implement case status online service that will provide case status of an immigration or naturalization action to customers (and their representatives) via an interactive voice response system on a toll free, 1–800 line or a web-based application. Individuals or their representatives will look up status on the Internet by typing in the receipt number of the submitted form or through interaction on a toll-free telephone line. For individuals or organizations such as law firms and non-profit organizations that represent many individuals and their respective cases, the INS proposes to implement a capability for each requestor to develop their own log of pending cases on the web. The log will include multiple receipt numbers that correspond to individuals' cases. A requestor will have access only to a non-attributable case status receipt number.

INS will provide an option for the requestor to receive email notification of status. The requestor would query the system and, if desired, request email notification of further status changes. This option reduces the number of times that a customer must access the system for case status.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 15, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: New information collection.*

(2) *Title of the Form/Collection:* INS Case Status Service Online.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form No. (File No. OMB–33). National Customer Service Center, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. The INS proposes to implement an electronic website as a part of the Customer Relationship Interface System (CRIS) initiative. The system will allow individuals or their representatives to request case status. The INS proposes to permit the requestor to look up status by entering on a website the receipt number of the submitted action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000,000 responses at 4.5 minutes (0.75) per response.

(6) *An estiamte of the total public burden (in hours) associated with the collection:* 75,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: August 6, 2002.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–20476 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: extension of a currently approved collection; Equal Employment Opportunity Plan certification and short form.

The Department of Justice (DOJ), Office of Justice Programs, Office for Civil Rights, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 15, 2002.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions with instructions or additional information, please contact Daphne Felten-Green (202) 305–3010, Office of Justice Programs, US Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Accounting System and Financial Capability Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OJP Form 7120/1. Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Not-for-profit institutions. *Other:* For-profit institutions. This form will be completed by applicants that are newly-formed firms or established forms with no previous grants awarded by the Office of Justice Programs. It is used as an aide to determine those applicants/grantees that may require special attention in matters relating to the accountability of Federal funds. This information is required for assessing the financial risk of a potential recipient in administrating federal funds in accordance with OMB Circular A–110 and 28 CFR part 70.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,250 respondents receiving a grant of $500,000 or more will complete a 1-hour Equal Employment Opportunity Plan Short Form and submit it to the Office of Justice Programs. In addition, an estimated 7000 respondents seeking grants ranging from $25,000 up to $500,000 will be required to complete the ¼ hour certification stating that they are maintaining a current Equal Employment Opportunity Plan on file and submit the certification to the Office of Justice Programs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the Equal Employment Opportunity Plan Short Form is 1250 hours. The total hour burden to complete the EEOP certification is 1750. The annual burden hours is 3000.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–20443 Filed 8–12–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

International Labor Reporting Initiative

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for cooperative agreement applications (SGA 02–24).

This notice contains all of the necessary information and forms needed to apply for cooperative agreement funding.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), will award funds for up to three cooperative agreements to an organization or organizations to develop and implement projects to assist ILAB, as mandated by its 2002 Congressional Appropriation, to build its permanent capacity to monitor and report regularly and in-depth to the Congress on the extent to which foreign countries with trade and investment agreements with the United States respect internationally recognized worker rights and promote core labor standards. USDOL is seeking applications from qualified organizations for the implementation of innovative, effective, and sustainable approaches to quality information gathering at the global, regional, or national level.

DATES: The closing date for receipt of applications is September 11, 2002. Applications must be received by 4:45 p.m. Eastern Daylight Savings Time (EDST) at the address below. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored.

ADDRESSES: Application forms will not be mailed. They are published in this **Federal Register** Notice, and in the **Federal Register** which may be obtained from your nearest U.S. Government office, public library or on-line at *http://www.archives.gov/federal_register/index.html.* Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Attention: Lisa Harvey, Reference: SGA 02–24, Washington, D.C. 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; however, the applicant bears the responsibility for timely submission.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey: E-mail address: *harvey-lisa@dol.gov.* All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the recent concerns involving anthrax contamination. All applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this it not a toll free number), prior to the closing deadline. All inquiries should reference SGA 02–24. See Section III. C for further information.

SUPPLEMENTARY INFORMATION: ILAB is seeking innovative, reliable, and sustainable approaches to gathering valid and credible information and data on the extent to which foreign countries with trade and investment agreements with the United States effectively promote core labor standards as embodied in the ILO Declaration on Fundamental Principles and Rights at Work and respect internationally recognized worker rights as currently required under various U.S. laws.

For the purposes of these cooperative agreements, core labor standards and their principles are those outlined in the International Labor Organization's 1998 Declaration of Principles and Rights at Work namely: (1) Freedom of Association and the effective recognition of the right to collective bargaining; (2) the elimination of all forms of forced or compulsory labor; (3) the effective abolition of child labor; and (4) the elimination of discrimination in respect of employment and occupation.

Internationally recognized worker rights, as defined by Section 507 of the Generalized System of Preferences (GSP), include the: (A) The right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form or forced or compulsory labor; (D) a minimum age for the employment of children; and (E) acceptable conditions of work with respect to minimum wages, hours of

work, and occupational safety and health.

ILAB engages in a multitude of activities that demand a clear understanding of countries' national labor laws, systems of enforcement, and current labor practices in regards to international labor standards and acceptable conditions of work. ILAB uses this information in fulfilling its overall mission of participating in the development and implementation of U.S. Government economic, trade and immigration policy.

The cooperative agreement(s) is to be actively managed by ILAB's Office of Foreign Relations to assure achievement of the stated objectives. Applicants are encouraged to be creative in proposing innovative and cost-effective interventions that will have a demonstrable impact on the gathering better quality, and sustainable information at the global, regional, or national levels. Applicants will be expected to complement and coordinate with, but not to duplicate, other existing ILAB efforts at labor monitoring, in particular the National Academy of Science's *Committee on Monitoring International Labor Standards*[1]. Further, applicants are encouraged to draw from and seek to build the capacity of national governments in this framework by cooperating with national institutions that are responsible for implementing labor laws such as the Labor Inspection Departments at Ministries of Labor. The project also looks for proposals that advance democratic institution building through civil society.

I. Background and Project Scope

An understanding of workers' rights and conditions around the world is critical for the United States as it seeks to promote compliance with core labor standards through economic interactions with other countries. The United States' regional and global trade agreements provide the United States and its trading partners with unique opportunities in the global economy. But increased trade also presents a challenge in terms of the breadth of countries in which we need a better understanding of adherence with labor standards and treatment of workers. The United States' commitment to promote compliance with international labor standards and acceptable conditions of work requires a system to measure and understand what actual international labor standards and acceptable conditions of work are required by each country's labor laws, what enforcement compliance mechanisms are used, and their progress on adherence to them.

ILAB has specific responsibility for USDOL's international activities. ILAB, in close cooperation with other government agencies, non-governmental organizations, and businesses, supports the promotion and implementation of internationally recognized labor standards. The goal of these shared activities is to create a prosperous international economy in which workers are allowed their basic democratic rights to organize, to safely work, and to achieve greater economic security. ILAB has been given the charge to develop a resource system for monitoring compliance with international labor standards and acceptable conditions of work.

Successfully developing and implementing such a system is a complex process, requiring expertise, innovation, and objectivity. Approaches may vary but all should emphasize understanding, through some form of measurement, country-level compliance with international standards and acceptable conditions of work. Projects should also put an emphasis on sustainability through national-capacity building.

II. Authority

USDOL is authorized to award and administer this project by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, Pub. L. 107–116, 115 Stat. 2177 (2002).

III. Application Process

A. Eligible Applicants

Any commercial, international, or non-profit organization, which may include faith-based organizations, capable of successfully implementing a project to advance labor reporting is eligible for this cooperative agreement. An applicant may partner with one or more organizations to implement a project. In the case of co-applicants, a lead organization must be identified. The capability of an applicant or co-applicants to perform necessary aspects of this solicitation will be determined under Section V.B Rating Criteria.

Please note that eligible cooperative agreement applicants must not be classified under the internal revenue code as a section 501(c)(4) entity. See 26 U.S.C. 501(c)(4). According to the Lobbying Disclosure Act of 1995, as amended 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) ink-signed original, complete application plus two (2) copies of the proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Washington, DC 20210, not later than 4:45 p.m. EDST, August 27, 2002.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, ''Application for Federal Assistance'' (Appendix A) (The entry on SF 424 for the Catalog of Federal Domestic Assistance Number (CFDA) is 17.700) and sections A-F of the Budget Information Form SF 424A (Appendix B). Part II must contain a technical proposal that demonstrates capabilities in accordance with the Statement of Work (Section IV. A) and the selection criteria (Section V. B).

To be considered *responsive* to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 40 single-sided (8½″ × 11″), double-spaced, 10 to 12 pitch typed pages for which a response is submitted. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. Standard forms and attachments are not included in the page limit. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. These pages are also *not* included in the page limits.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. 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 after 4:45 pm EDST September 11, 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 September 11, 2002;

2. it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

[1] The website for the National Academy of Sciences project is: *http://www.nas.edu/internationallabor.*

3. it was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to September 11, 2002.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date 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 that the postal clerk place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted, however, the applicant bears the responsibility for timely submission. Because of delay in the receipt of mail in the Washington, DC area, it is recommended that you confirm receipt of your application by contacting Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. All inquires should reference SGA 02–24.

D. Funding Levels

Approximately U.S. $3 million is budgeted for this project, to fund up to three projects, globally, regionally, or at the national level, with a particular emphasis on countries or areas where the United States has trade and investments interests such as the GSP, the African Growth and Opportunity Act (AGOA), or the Caribbean Basin Trade Partnership Act (CBTPA). Potential bilateral or regional agreements such as the U.S.-Chile Free Trade Agreement or the Free Trade Area of the Americas (FTAA) may also be considered. A partnership of more than one organization may apply to implement the project. Applicants will submit one application and are encouraged to utilize local NGOs and Ministries of Labor to implement much of the project in order to institutionalize and sustain project improvements and reduce costs. The award of any sub-contract will be subject to USDOL approval.

E. Project Duration

The duration of the project(s) funded by this SGA is up to three (3) years. The start date of project activities will be negotiated upon the awarding of the cooperative agreements.

IV. Requirements

A. Statement of Work

In developing their proposals, potential cooperative agreement recipients should develop a strategy designed to elicit better information on national labor laws, their enforcement, and country practices in relation to the core labor standards of: 1. Freedom of Association and effective recognition of the right to collective bargaining; 2. The elimination of all forms of forced or compulsory labor; 3. The effective abolition of child labor; and 4. The elimination of discrimination in respect of employment and occupation. In addition, ''acceptable conditions of work'' as defined by U.S. trade law (hours of work, minimum wage, and occupational safety and health) may also be included. Projects may address one, several, or all of the standards. Acknowledging the vast differences in economic development across countries, this project is not necessarily seeking comparative data, nor is it interested in the specificity of individual company level information. The strategy may also demonstrate how the applicant proposes to strengthen national capacity by involving Ministries of Labor, labor organizations, employer organizations, and/or NGOs in the implementation of the project. The applicant should draft a strategy demonstrating how it will define and meet the project objectives by the end of the grant period, and how the issue of sustainability will be integral to project implementation. Critical to sustainability will be the need to work cooperatively with stakeholders in the countries, including Ministries/Departments of Labor and Education, trade unions, employer organizations and U.S. Embassies.

The organization or organizations awarded the cooperative agreement(s) (hereinafter referred to as the ''grantee'') may be required to work cooperatively with ILAB's current monitoring initiative through the National Academy of Sciences, the *Committee on Monitoring International Labor Standards*, and that project's resulting database.

B. Deliverables

This section is provided so that applicants may more accurately estimate the staffing budgetary requirements when preparing their proposal.

Following the award of the cooperative agreement(s), grantees shall meet with ILAB at a Post-Award Meeting to discuss the project design, components, and outcomes; ensure complementation of projects without duplication; timelines and coordination; and final approval. At that meeting the grantees and the Department will discuss the specific deliverables. Subject to the nature of the project(s), the applicant will be required to submit copies of the following to USDOL by the specified due dates. Other documents, such as project designs and work plans, are to be submitted by mutually agreed-upon deadlines.

1. *Project Designs and Work Plan.* The grantee(s) will submit a project document in a format that includes a background/justification section, project strategy (*i.e.,* objectives, outputs, activities, indicators), project timetable, project management organizational chart, project budget, and method to systematically monitor project results. The document will also include sections that cover coordination strategies, project management, and sustainability of project improvements. The project design and corresponding work plan will be drawn, in part, from the proposal written in response to this solicitation.

2. *Progress Reports.* The grantee(s) must furnish a typed quarterly report to USDOL, no later than 15 days from the last date of each quarter, *i.e.,* 31 March, 30 June, 30 September and 31 December of each year. The grantee(s) must also furnish a separate financial report (SF

272) to USDOL on the same quarterly basis. The report shall contain the following information:

a. An accurate account of activities carried out under project objectives during the reporting period as it relates to the work plan;

b. Major trends in the project that note particular success with a particular activity or trends that indicate a need to re-adjust or expand the work plan;

c. An accounting of staff, sub-contractor hours expended per task, broken down by individual;

d. An accounting of travel performed under the grant during the reporting period, including purpose of trip, persons or organizations contacted, and benefits derived;

e. A description of current problems that may impede performance, and proposed corrective action;

f. For each task in the work plan, a discussion of the work to be performed during the balance of the grant;

g. Lessons learned in project implementation;

h. Future actions planned in support of each project objectives; and

i. Aggregate amount of costs incurred during the reporting period, including estimated expenditures vs. budget.

3. *Monitoring and Evaluation.* Applicants shall explain their proposed approach for monitoring, including beginning and ending dates for projects, as well as indicators and methods for project evaluation.

4. *Final Report with Executive Summary.* The grantee shall submit to the USDOL a draft final report with executive summary sixty (60) days prior to grant expiration. The USDOL will review the report and provide comments to the grantee within thirty (30) days after it is received. The final report shall contain sections on the strategy, design, implementation, outcomes, and sustainability of the project including cost information. It shall also contain information on lessons learned and conclusions. It shall be accompanied by an executive summary not exceeding ten (10) pages in length and highlighting the above information. Two hard copies and an electronic version shall be submitted.

C. Production of Deliverables

1. *Materials Prepared and Purchased Under the Cooperative Agreement.* The grantee(s) must submit to USDOL all media-related and educational materials by it or it's sub-contract developed under this cooperative agreement(s), including relevant press releases, for use in this project(s) before they are reproduced, published, or used. The grantee(s) must consult with USDOL to ensure that materials are compatible with USDOL materials relating to the project, e.g., public relations material such as video and web site. USDOL considers brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the project, educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. The grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this cooperative agreement(s). All materials produced by grantee(s) must be provided to USDOL in a digital format for possible publication on the Internet by USDOL.

2. *Acknowledgment of USDOL Funding.* In all circumstances, the following must be displayed on printed materials:

''Preparation of this item was funded by the United States Department of Labor under Cooperative Agreement No. [insert the appropriate cooperative agreement number].

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or projects funded in whole or in part with Federal money, all grantees receiving Federal funds, including State and local governments and recipients of research grants, must clearly state:

a. The percentage of the total costs of the project or project, which will be financed with Federal money;

b. The dollar amount of Federal funds for the project or project; and

c. The percentage and dollar amount of the total costs of the project or project that will be financed by non-governmental sources.

In consultation with USDOL, identification of USDOL's role will be acknowledged in one of the following ways:

a. The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The grantee(s) will consult with USDOL on whether the logo should be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the grantee written permission to use the logo, after obtaining appropriate internal USDOL approval for use of the logo on the item.

b. If the USDOL determines the logo is not appropriate and does not give written permission, the following notice must appear on the document:

''This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government.''

D. Administrative Requirements

1. *General.* Grantee organizations will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., Non-Profit Organizations—OMB Circular A–122. The cooperative agreement(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Projects or Activities Receiving Federal Financial Assistance.

29 CFR Part 93—New Restrictions on Lobbying.

29 CFR Part 95—Uniform Administrative Requirements for 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—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

29 CRF Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

2. *Sub-contracts.* Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928, 13021 as amended, the grantee(s) is strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities and faith based organizations.

3. *Key Personnel.* The applicant must list the individual(s) who has been designated as having primary responsibility for the conduct and completion of all work in project(s) it proposes. The grantee(s) agrees to

inform the (Grants Officer's Technical Representative) GOTR whenever it appears impossible for one or more of these individual(s) to continue work on the project as planned. The grantee(s) may nominate substitute personnel for approval of the GOTR; however, the grantee(s) must obtain prior approval from the Grant Officer for all key personnel. If the Grant Officer determines not to approve the personnel change, he/she reserves the right to terminate the cooperative agreement.

4. *Encumbrance of Cooperative Agreement Funds.* Cooperative agreement funds may not be encumbered/obligated by the grantee(s) before or after the cooperative agreement period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only commitments for which a need existed during the cooperative agreement period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the grantee(s)'s purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

5. *Site Visits.* USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the grantee(s) or a sub-contractor(s) under this cooperative agreement(s), the grantee(s) must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations must be performed in such a manner as will not unduly delay the work.

V. Review and Selection of Applications for Cooperative Agreement Award

A. The Review Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A technical panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more grantee on the basis of the initial proposal submission; or, the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, the availability of funds, the best value to the Government, and other factors. The Grant Officer's determination for award under this SGA 02–24 is final.

Notice: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before a actual cooperative agreement is awarded, the Grant Officer will enter into negotiations concerning such items as project components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the proposal.

B. Rating Criteria and Selection

The technical panel will review applicants against the criteria listed below on the basis of 100 points with up to additional five points available for non-federal or leveraged resources.

The criteria are presented in the order of emphasis that they will receive.

1. *Approach, Understanding of the Issue, and Budget Plan (50 points).*

a. *Overview.* This section of the proposal must explain the strategy employed by the applicant to achieve results that:

(1) Collect systematic, sustainable information and or data on how countries comply with one or more of the core labor standards of: 1. Freedom of Association and effective recognition of the right to collective bargaining; 2. The elimination of all forms of forced or compulsory labor; 3. The effective abolition of child labor; and 4. The elimination of discrimination in respect of employment and occupation. In addition, 'acceptable conditions of work' as defined by U.S. trade law may also be included;

(2) Develop national institutional capacity to simultaneously strengthen adherence to core labor standards and to provide regular, reliable reporting on progress made toward improved compliance;

(3) Complement and coordinate, not duplicate or replicate, ongoing ILAB efforts on labor monitoring, namely the *National Academy of Sciences Committee on Monitoring International Labor Standards;* and

(4) Produce other expected outcomes over the period of performance for each of the tasks as defined by the applicant.

The applicant must describe in detail the proposed approach, including all tasks and methods to be utilized to implement the project. Also, the applicant must explain the rationale for using this approach. In addition, this section of the proposal must demonstrate the applicant's thorough knowledge and understanding of the core labor standards in the workplace, potential solutions to measuring and monitoring progress toward compliance with them, ability to work with the tripartite partners and NGOs, and any organizational experience in the field of labor monitoring related to the country or countries that are the focus of this initiative.

b. *Logical Framework.* The strategy should include an outline of the objectives, activities and indicators envisioned for implementation of the project.

c. *Implementation Plan.* The applicant must submit an implementation plan for the entire project, preferably with a visual such as a Gantt chart. The implementation plan should outline the approach that will be used to implement the project. The plan should list the activities envisioned for the life of the project as well as scheduling of activities by objective starting with the execution of the cooperative agreement and ending with the final report. In describing the implementation plan, the applicant must address the following points:

(1) Describe the use of existing or potential infrastructure and use of qualified personnel, including qualified nationals, to implement the project in the proposed countries or regions. The applicant also must include a project organizational chart, demonstrating management structure, key personnel positions and indicating proposed links with the relevant Government ministries, employer organizations, trade unions and other significant local actors.

(2) Develop a list of activities and explain how each relates to the overall development objective of measuring compliance with the described standard(s).

(3) Explain the strategy for researching and measuring progress on the compliance with the standards.

(4) Demonstrate how the applicant will strengthen national institutions and policies related to the core labor standards.

(5) Demonstrate how the applicant will systematically report on project performance to measure the achievement of the project objective(s).

d. *Management and Staff Loading Plan.* This section must also include a management and staff plan. The management plan should include the following:

(1) A project organization chart and accompanying narrative which differentiates between elements of the applicant's staff and sub-contractors or consultants who will be retained;

(2) A description of the functional relationship between elements of the project's organization; and

(3) The identity of the individual responsible for project management and the lines of authority between this individual and other elements of the project.

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation.

e. *Budget Plan.* The applicant must develop a proposed budget for implementation of the project. This section of the application must explain the costs for performing all of the requirements presented in this solicitation and for producing all required reports and other deliverables presented in this solicitation; costs must include labor, training, material production and dissemination, equipment, travel and other related costs. The budget plan will be evaluated solely for the purpose of determining the efficient and effective allocation of funding for proposed project implementation. Preference may be given to applicants with low administrative costs. Administrative costs shall be reflected separately on the budget plan from project costs.

2. *Experience and Qualifications of the Applicant (25 points).*

The evaluation criteria in this category are as follows:

a. The applicant, including any partners, must demonstrate a thorough understanding of and experience with the application of the core labor standards, as described above, and potential ways to measure country progress on their implementation; research capabilities; working directly with government Ministries, employers organizations, trade unionists and other local organizations, *e.g.,* NGOs or community or faith-based groups. The applicant must submit a signed letter of agreement between its partners or co-applicants verifying the intention of the parties to work together to implement the project.

b. The capability of the applicant(s) for the labor reporting project may be demonstrated by one or more staff member assigned to oversee the project with experience in the following area:

(1) Core Labor Standards and their application;

(2) In-depth social science research capacity; and

(3) Coordination with the Ministries of Labor and Education, Employer Organizations, non-governmental organizations and Trade Union officials.

c. The applicant(s) must also demonstrate either that it has an international system of operations either by affiliates or by agreement in the regions or that it has an effective system of operations in each designated country. These contacts must enable the applicant(s) to demonstrate that it can perform in the proposed regions or countries.

3. *Experience and Qualifications of Key Personnel (25 points).* This section of the application must include sufficient information for judging the quality and the competence of key staff proposed to be assigned to the project(s) proposed to assure that they meet the required qualifications. Successful performance of the proposed work depends heavily on the qualifications of the individuals committed to the project. Accordingly, in its evaluation of the applicant's proposal, USDOL will place emphasis on the applicant's commitment of key personnel qualified for the work involved in accomplishing the assigned tasks. Information provided on the experience and educational background of personnel must indicate the following:

a. The identity of key personnel assigned to the project. ''Key personnel'' are staff who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have their hours reduced without the approval of the Grant Officer.

b. The educational background and experience of all staff to be assigned to the project.

c. The special capabilities of staff that demonstrate prior experience in organizing, managing and performing similar efforts.

d. The current employment status of staff and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance is proposed, organizational control should be clearly delineated to ensure responsiveness to the needs of USDOL. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of grant award.

The following information must be furnished:

a. The applicant must designate a Project Director to oversee the project(s) and other key personnel to perform the requirements for the International Labor Reporting Project. The Project Director must have a minimum of three years of professional experience in a field related to this initiative.

b. The applicant should specify other personnel proposed to carry out the requirements of this solicitation.

c. An organization chart showing the applicant's proposed organizational structure for performing task requirements for the project(s) proposed, along with a description of the roles and responsibilities of all key personnel proposed for this project(s). The chart should also differentiate between elements of the applicant's staff and sub-contractors or consultants who will be retained.

d. The applicant must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks must be

charted to show time required to perform them by months or weeks.

e. A résumé for each of the key personnel to be assigned to the project. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations and educational background. Duties must be clearly defined in terms of role performed, *e.g.,* manager, team leader, consultant, etc. (Résumés must be included as attachments, which do not count against the page limitation).

5. *Leveraging of Funding (5 points).* USDOL will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the proposal. These programs will not be financed by the project but can complement and enhance project objectives. The applicant may include any leveraging or co-funding anticipated. To be eligible for additional points under this criterion, the applicant must list the source(s) of funds, the nature, and activities anticipated with these funds under this cooperative agreement, and any partnerships, linkages or coordination of activities, and/or cooperative funding.

This stated commitment will be incorporated into the text of the cooperative agreement with the selected applicant(s).

Signed at Washington, DC, this seventh day of August, 2002.

Lawrence J. Kuss,

Grant Officer.

Attachments:

Appendix A: SF 424—Application Form

Appendix B: Budget Information Sheet

BILLING CODE 4510–29–P

Appendix A: SF 424 - Application Form.

APPLICATION FOR **APPENDIX AA@** **OMB**

Approval No. 0348-0043

FEDERAL ASSISTANCE		**2. DATE SUBMITTED**	**Applicant Identifier**
1. TYPE OF SUBMISSION:	**Preapplication**	**3. DATE RECEIVED BY STATE**	**State Application Identifier**
Application ~ Construction	**~ Construction**	**4. DATE RECEIVED BY FEDERAL AGENCY**	**Federal Identifier**
~ Non-Construction	**~ Non-Construction**		

5. APPLICANT INFORMATION	
Legal Name:	**Organizational Unit:**
Address (give city, county, State and zip code):	**Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code):**

6. EMPLOYER IDENTIFICATION NUMBER (EIN): GG-GGGGGGG	**7. TYPE OF APPLICANT: (enter appropriate letter in box)** G **A. State** **H Independent School Dist.** **B. County** **I State Controlled Institution of Higher Learning** **C. Municipa J . Private University** **D. Township K Indian Tribe** **E. Interstate L. Individual** **F. Intermunicipal** **M. Profit Organization** **G. Special District** **N. Other (Specify):** _____
8. TYPE OF APPLICATION: **~ New ~** **Continuation** **~ Revision** **If Revision, enter appropriate letter(s) in box(es):** G G **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: GG-GGG **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	b. NO. ~ PROJECT IS NOT COVERED BY E.O. 12372 ~ OR PROJECT HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$ .00	
f. Project Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. TOTAL	$ .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. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)

Prescribed by OMB Circular A-102

Authorized for Local Reproduction

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			

11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	*(B)*	*(C)*
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.*
2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*
3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.

5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Costs: Add lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. Training /Stipend Cost: (If allowable)

11. Total Federal funds Requested: Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 02–20463 Filed 8–12–02; 8:45 am]
BILLING CODE 4510–28–C

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Regulation Regarding Participant Directed Individual Account Plans Under ERISA 404(c)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the extension of the information collection request (ICR) incorporated in a regulation pertaining to participant directed individual account plans under section 404(c) of the Employee Retirement security Act of 1974 (ERISA). A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before October 15, 2002.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 404(c) of ERISA provides that if an individual account pension plan permits a participant or beneficiary to exercise control over assets in his account and the participant or beneficiary in fact exercises such control, that participant or beneficiary shall not be deemed to be a fiduciary by such exercise of control, and that no person otherwise a fiduciary shall be liable for any loss or breach that results from this exercise of control.

The opportunity to exercise control includes the opportunity to obtain sufficient information to make informed decisions with respect to investment alternatives. This regulation describes the type and extent of information required to be made available to participants and beneficiaries for this purpose. In the absence of such disclosures, participants might not be able to make informed decisions about investing their individual accounts, and persons who are otherwise fiduciaries with respect to these plans would not be afforded relief from the fiduciary responsibility provisions of Title I of ERISA with respect to these transactions.

II. Desired Focus of Comments

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in the regulation pertaining to participant directed individual account plans under section 404(c) of ERISA. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Regulation Regarding Participant Directed Individual Account Plans (ERISA section 404(c) Plans).

OMB Number: 1210–0090.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 324,000.

Frequency of Response: On occasion.

Responses: 324,000.

Estimated Total Burden Hours: 37,000.

Total Burden Cost (Operating and Maintenance): $17,755,000.

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

Dated: August 6, 2002.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 02–20462 Filed 8–12–02; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–095)]

NASA Advisory Council, Biological and Physical Research Committee, Physical Science Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Committee, Physical Science Advisory Subcommittee.

DATES: Wednesday, August 28, 2002, from 8 a.m. to 5 p.m..

ADDRESSES: NASA Headquarters Street, Room MIC–7 (7H46), 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Brad Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202–358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Introduction
—Program Issues and Status
—OBPR Plans
—Concepts for New Initiatives
—Proposed PSAS Activities 2002–2003
—Discussion and Summary
—Administrative/Assignments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 7, 2002.

Sylvia K. Kraemer,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 02–20460 Filed 8–12–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before September 12, 2002 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on May 20, 2002 (67 FR 35593 and 35594). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Returned Request Form, Reply to Request Involving Relief Agencies, Walk-In Request for OPM Records or Information.

OMB number: 3095–0037.

Agency form number: NA Forms 13022, 13064, 13068.

Type of review: Regular.

Affected public: Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 4,500.

Estimated time per response: 5 minutes.

Frequency of response: On occasion, when individuals desire to acquire information from civilian personnel or medical records.

Estimated total annual burden hours: 375 hours.

Abstract: In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. The authority for this information collection is contained in 36 CFR 1228.164. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF's or EMF's, they must provide in forms or in letters certain information about the employee and the nature of the request. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a Personnel or Medical record.

Dated: August 7, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–20432 Filed 8–12–02; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–4]

Notice of Issuance of Amendment to Materials License No. SNM–2503; Duke Energy Corporation; Oconee Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 7 to Materials License SNM–2503 held by Duke Energy Corporation (Duke) for the receipt, possession, transfer, and storage of spent fuel at the Oconee Independent Spent Fuel Storage Installation (ISFSI), located in Oconee County, South Carolina. The amendment is effective as of the date of issuance.

By application dated October 31, 2001, Duke requested an amendment to Materials License SNM–2503 for the Oconee Independent Spent Fuel Storage Installation (ISFSI) to change the technical specifications for environmental reporting to the NRC. The request involved changing the frequency for submitting an environmental report of radioactive effluent releases from semi-annually to annually, in accordance with current NRC environmental reporting requirements in 10 CFR 72.44(d).

This amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment meets the criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(10) of the regulations. Therefore, an environmental assessment need not be prepared in connection with issuance of the amendment.

The request for amendment was docketed under 10 CFR part 72, Docket 72–4. For further details with respect to this action, see the amendment request

dated October 31, 2001. The NRC maintains an Agencywide Documents 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 Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 31st day of July, 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–20433 Filed 8–12–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 12, 19, 26, September 2, 9, 16, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 12, 2002

Tuesday, August 13, 2002

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

9:30 a.m.—Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–425–1703)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Thursday, August 15, 2002

3 p.m.—Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of August 19, 2002—Tentative

Wednesday, August 21, 2002

9:30 a.m.—Briefing on NRC International Activities (Public Meeting) (Contact: Janice Dunn Lee, 301–415–1780)

This meeting will be webcast live at the Web address—*www.nrc.gov*

1:55 p.m.—Affirmation Session (Public Meeting) (If needed)

2 p.m.—Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of August 26, 2002—Tentative

There are no meetings scheduled for the Week of August 26, 2002.

Week of September 2, 2002—Tentative

There are no meetings scheduled for the Week of September 2, 2002.

Week of September 9, 2002—Tentative

There are no meetings scheduled for the Week of September 9, 2002.

Week of September 16, 2002—Tentative

There are no meetings scheduled for the Week of September 16, 2002.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information: By a vote of 5–0 on August 6 and 7, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Intragovernmental Issues (Closed-Ex. 1 & 9)'' be held on August 15, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 8, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–20555 Filed 8–9–02; 10:25 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedule A and Schedule C in the excepted service as required by 5 CFR 6.1 and 213.103.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are 1 Schedule A authority and the individual authorities established under Schedule C between June 1, 2002 and June 30, 2002. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

Chemical Safety and Hazard Investigation Board

Six positions of either Chemical Incident Investigators or Chemical Safety Recommendations Specialist, in the Office of Investigations and Safety Programs. No new appointments may be made under this authority after September 30, 2002.

Schedule C

The following Schedule C authorities were established during June 2002:

Department of Agriculture

Special Assistant to the Administrator, Farm Service Agency. Effective June 7, 2002.

Special Assistant to the Administrator, Rural Utilities Service. Effective June 14, 2002.

Confidential Assistant to the Director, Office of Small and Disadvantaged Business Utilization. Effective June 18, 2002.

Special Assistant to the Administrator, Rural Utilities Service. Effective June 19, 2002.

Special Assistant to the Deputy Administrator, Office of Community Development. Effective June 19, 2002.

Department of Commerce

Deputy Director to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective June 4, 2002.

Special Assistant to the Assistant Secretary for Trade Development,

International Trade Administration. Effective June 13, 2002.

Special Assistant to the Chief of Staff. Effective June 14, 2002.

Policy Advisor to the Chief of Staff. Effective June 18, 2002.

Confidential Assistant to the Director, Office of Public Affairs. Effective June 20, 2002.

Department of Defense

Research Assistant to the Deputy Assistant Secretary of Defense for Issues and Strategy Management. Effective June 4, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective June 6, 2002.

Director of Protocol to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective June 13, 2002.

Defense Fellow to the Special Assistant to the Secretary of Defense (White House Liaison). Effective June 14, 2002.

Department of Education

Director, Faith-Based and Community Initiatives Center to the Secretary of Education. Effective June 6, 2002.

Special Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective June 7, 2002.

Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education. Effective June 18, 2002.

Confidential Assistant to the Deputy Assistant Secretary for Legislation and Congressional Affairs. Effective June 21, 2002.

Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective June 25, 2002.

Confidential Assistant to the Deputy Assistant Secretary for Regional Services. Effective June 25, 2002.

Department of Energy

Special Assistant to the Assistant Secretary for Fossil Energy. Effective June 6, 2002.

Deputy Assistant Secretary for Budget and Appropriations to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective June 7, 2002.

Senior Advisor to the Executive Director, Secretary of Energy Advisory Board. Effective June 12, 2002.

Program Manager (Energy Reliability) to the Director, Office of Security. Effective June 24, 2002.

Senior Manager of Public Affairs, National Nuclear Security Administration to the Director, Congressional Intergovernmental and Public Affairs. Effective June 26, 2002.

Department of Health and Human Services

Special Assistant to the White House Liaison for Political Personnel, Boards and Commissioners. Effective June 5, 2002.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Public Affairs. Effective June 4, 2002.

Deputy Assistant Secretary for Economic Affairs to the Assistant Secretary for Community Planning and Development. Effective June 11, 2002.

Staff Assistant to the Director, Executive Scheduling. Effective June 27, 2002.

Department of the Interior

Special Assistant to the Director, Fish and Wildlife Service. Effective June 7, 2002.

Special Assistant to the Assistant Secretary, Fish, Wildlife and Parks. Effective June 14, 2002.

Special Assistant to the Director, Fish and Wildlife Service. Effective June 21, 2002.

Special Assistant to the Deputy Director for External Affairs. Effective June 26, 2002.

Department of Justice

Special Assistant for International Protocol to the Director, Office of International Affairs, Criminal Division. Effective June 10, 2002.

Counsel to the Director, Office of International Affairs. Effective June 20, 2002.

Secretary (OA) to the Assistant United States Attorney, Northern District of Oklahoma. Effective June 25, 2002.

Secretary (OA) to the United States Attorney, Eastern District of Arkansas. Effective June 25, 2002.

Department of Labor

Special Assistant to the Assistant Secretary for Office of Congressional and Intergovernmental Affairs. Effective June 3, 2002.

Special Assistant to the Assistant Secretary for Public Affairs. Effective June 7, 2002.

Special Assistant to the Director, Office of Faith Based and Community Initiatives. Effective June 7, 2002.

Staff Assistant to the White House Liaison. Effective June 19, 2002.

Special Assistant to the Director, Office of Public Liaison. Effective June 26, 2002.

Deputy Director to the Director, Office of Faith-Based and Community Initiatives. Effective June 26, 2002.

Staff Assistant to the Executive Assistant to the Secretary of Labor. Effective June 26, 2002.

Department of State

Foreign Affairs Officer to the Coordinator for United States Assistance to Europe and Eurasia. Effective June 7, 2002.

Executive Assistance to the Inspector General. Effective June 13, 2002.

Staff Assistant to the Director, White House Liaison. Effective June 13, 2002.

Staff Assistant to the Assistant Secretary for Resource Management. Effective June 13, 2002.

Senior Advisor to the Assistant Secretary, International Narcotics and Law Enforcement Affairs. Effective June 13, 2002.

Special Assistant to the Coordinator, International Information Program. Effective June 13, 2002.

Foreign Affairs Officer to the Assistant Secretary for Western Hemisphere Affairs. Effective June 14, 2002.

Office Director (Foreign Affairs) to the Assistant Secretary, Democracy, Human Rights and Labor. Effective June 19, 2002.

Special Assistant to the Assistant Secretary for Resource Management. Effective June 20, 2002.

Special Assistant to the Deputy Assistant Secretary. Effective June 26, 2002.

Resource, Plans, and Policy Advisor to the Assistant Secretary for Resource Management. Effective June 26, 2002.

Legislative Analyst to the Assistant Secretary for Legislative Affairs. Effective June 27, 2002.

Resources, Plans and Policy Advisor to the Assistant Secretary for Resource Management. Effective June 28, 2002.

Department of Transportation

Senior Advisor to the Maritime Administrator. Effective June 20, 2002.

Department of Veterans Affairs

Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective June 5, 2002.

Environmental Protection Agency

Program Advisor (Advance Person) to the Administrator. Effective June 4, 2002.

Special Assistant (Advance Person) to the Administrator. Effective June 7, 2002.

Director of Long Term Communication Planning to the Administrator. Effective June 14, 2002.

Director, Advance Staff to the Director of Long-Range Communications Planning. Effective June 21, 2002.

Special Assistant to the Associate Administrator for the Office of Public Affairs. Effective June 21, 2002.

Federal Emergency Management Agency

Staff Assistant to the Assistant Director, Administration and Planning Resource Directorate. Effective June 6, 2002.

Executive Assistant to the Assistant Director, Administration and Resource Planning. Effective June 7, 2002.

General Services Administration

Events Management Specialist to the Director of External Affairs. Effective June 18, 2002.

National Credit Union Administration

Special Assistant for Legislative Affairs to the Director of Public and Congressional Affairs. Effective June 3, 2002.

Office of National Drug Control Policy

Press Secretary (Assistant Director) to the Director, Office of National Drug Control Policy. Effective June 5, 2002.

Office of the United States Trade Representative

Confidential Assistant to the Chief Agricultural Negotiator. Effective June 11, 2002.

Pension Benefit Guaranty Corporation

Assistant Executive Director for Legislative Affairs to the Executive Director, Pension Benefit Guaranty Corporation. Effective June 7, 2002.

Small Business Administration

Assistant Scheduler to the Administrator, Small Business Administration. Effective June 10, 2002.

Special Assistant to the Assistant Administrator for Communications and Public Liaison. Effective June 12, 2002.

Deputy Press Secretary and Senior Advisor to the Associate Administrator for Communications and Public Liaison. Effective June 20, 2002.

Senior Advisor to the Associate Deputy Administrator for Capital Access. Effective June 26, 2002.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–20434 Filed 8–12–02; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46319; File No. SR–OCC–2002–12]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Accelerating the Maturity Date for Certain Adjusted Security Futures Contracts

August 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 25, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC Rule 1304 to permit OCC to accelerate the maturity date of security futures contracts that have been adjusted to call only for the delivery of a fixed amount of cash.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit OCC to accelerate the maturity date of security futures contracts that have been adjusted to call only for delivery of a fixed amount of cash. If the issuer of an underlying security were party to a cash merger in which its stock was converted into a right to receive cash only, futures on that stock would ordinarily be adjusted to call for delivery of the cash. Under the proposed rule change, OCC would have authority to accelerate the maturity dates of the adjusted futures to fall on or shortly after the effective date of the merger. The final settlement price for all accelerated futures, regardless of maturity date, would be fixed at the amount of cash into which the underlying security has been converted.

The proposed rule change parallels OCC Rule 807, which applies to European-style FLEX equity options. Acceleration of the expiration date for European-style options that have been adjusted to call for delivery of cash results in the acceleration of the options' ability to be exercised and therefore in the acceleration of payment of the exercise settlement amount to the holder if the option is in the money. Futures contracts, by contrast, are marked to market daily and settlement of an accelerated contract will occur through a final mark-to-market payment based on the amount of cash into which the underlying security has been converted. Like Rule 807, the proposed rule change would relieve market participants of the burden of continuing to maintain and account for open interest in contracts that no longer are subject to increases or decreases in value.

The proposed rule change is consistent with the requirements of section 17A of the Act[3] and the rules and regulations thereunder applicable to OCC because it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received. OCC will notify the

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] 15 U.S.C. 78q–1.

Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2002–12 and should be submitted by September 3, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–20405 Filed 8–12–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3428, Amdt. 4]

State of Texas; Corrected Copy

In accordance with a notice received from the Federal Emergency Management Agency, dated July 17, 2002, the above numbered declaration is hereby amended to include Callahan, Live Oak, San Patricio and Zavala Counties in the State of Texas as disaster areas due to damages caused by severe storms and flooding occurring on June 29, 2002 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Aransas County in Texas. All contiguous counties have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is September 2, 2002, and for economic injury the deadline is April 4, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 7, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–20461 Filed 8–12–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4095]

Culturally Significant Objects Imported for Exhibition Determinations: ''Modigliani and the Artists of Montparnasse''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, ''Modigliani and the Artists of Montparnasse,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Albright-Knox Art Gallery, Buffalo, New York, from on or about October 19, 2002, to on or about January 12, 2003, the Kimbell Art Museum, Fort Worth, Texas, from on or about February 9, 2003, to on or about May 25, 2003, the Los Angeles County Museum of Art, from on or about June 29, 2003, to on or about September 28, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: August 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–20474 Filed 8–12–02; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–248]

WTO Dispute Settlement Proceeding Regarding United States—Safeguard Measures on Certain Steel Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on June 3, 2002, a dispute settlement panel was established at the request of the European Communities (''EC'') under the Marrakesh Agreement Establishing the World Trade Organization (''WTO'') to examine safeguard measures imposed on certain steel products pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253) (''safeguard measures'') and established in Presidential Proclamation 7529 of March 5, 2002 (67 FR 10553 (Mar. 7, 2002)). Panels were also established at the request of Brazil, China, Japan, Korea, New Zealand, Norway, and Switzerland to examine these safeguard measures. Pursuant to an agreement with these countries (the ''complaining parties''), one panel will examine all of these disputes. The

complaining parties allege that the safeguard measures are inconsistent with the obligations of the United States under the General Agreement on Tariffs and Trade 1994 (''GATT 1994'') and the WTO Agreement on Safeguards (''SA''). USTR invites written comment from the public concerning the issues raised in this dispute. Canada, Chinese Taipei, Cuba, Malaysia, Mexico, Thailand, Turkey, and Venezuela have notified the WTO of their intention to participate as third parties.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 12, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0025@ustr.gov*, Attn: ''Steel Safeguard Measures Dispute'' in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Steel Safeguard Measures Dispute, with a confirmation copy sent electronically or by fax to 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Willis S. Martyn, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)), USTR is providing notice that on June 3, 2002, a WTO dispute settlement panel was established at the request of the EC. Panels were also established at the request of Brazil, China, Japan, Korea, New Zealand, Norway, and Switzerland to examine these safeguard measures. Pursuant to an agreement with these countries (the ''complaining parties''), one panel will examine all of these disputes. The Panel, which would hold its meetings in Geneva, Switzerland, is expected to issue a report on its findings and recommendations within six to nine months after its establishment.

Major Issues Raised and Legal Basis of the Complaint

The complaining parties allege that the safeguard measures are inconsistent with certain obligations of the United States under GATT 1994 and the SA. The safeguard measures consist of additional tariffs and a tariff-rate quota on the following steel products:

(a) Certain flat steel, consisting of slabs provided for in the superior text to subheadings 9903.72.30 through 9903.72.48 of the Harmonized Tariff Schedule of the United States (''HTS''); plate provided for in the superior text to subheadings 9903.72.50 through 9903.72.60 of the HTS; hot-rolled steel provided for in the superior text to subheadings 9903.72.62 through 9903.72.77 of the HTS; cold-rolled steel provided for in the superior text to subheadings 9903.72.80 through 9903.72.98 of the HTS; and coated steel provided for in the superior text to subheadings 9903.72.99 through 9903.73.14 of the HTS;

(b) Certain hot-rolled bar provided for in the superior text to subheadings 9903.73.28 through 9903.73.38 of the HTS;

(c) Certain cold-finished bar provided for in the superior text to subheadings 9903.73.39 through 9903.73.44 of the HTS;

(d) Certain rebar provided for in the superior text to subheadings 9903.73.45 through 9903.73.50 of the HTS;

(e) Certain certain tubular products provided for in the superior text to subheadings 9903.73.51 through 9903.73.62 of the HTS;

(f) Certain carbon and alloy fittings provided for in the superior text to subheadings 9903.73.66 through 9903.73.72 of the HTS;

(g) Certain stainless steel bar provided for in the superior text to subheadings 9903.73.74 through 9903.73.81 of the HTS;

(h) Certain stainless steel rod provided for in the superior text to subheadings 9903.73.83 through 9903.73.89 of the HTS;

(i) certain tin mill products provided for in the superior text to subheadings 9903.73.15 through 9903.73.27 of the HTS; and

(j) Certain stainless steel wire provided for in the superior text to subheadings 9903.73.91 through 9903.73.96 of the HTS.

The complaining parties allege that the safeguard measures are inconsistent with certain obligations of the United States under GATT 1994 and the SA. Specifically, they allege that the safeguard measures are inconsistent with:

- Article XIX:1 of GATT 1994 because the United States did not show that imports increased in such conditions as to cause serious injury or threat of serious injury as a result of unforeseen developments;
- Articles 2.1, 4.2(a), and 4.2(c) of the SA and Article XIX of GATT 1994 because the United States failed to properly define the domestic industry producing a product like or directly competitive with increased imports;
- Articles 2.1 and 4.2(a) of the SA and Article XIX:1 of GATT 1994 because there were no increased imports;
- Articles 2.1 and 4.2(a) of the SA and Article XIX of the GATT 1994 because the domestic industry was not experiencing serious injury or the threat of serious injury;
- Articles 2.1 and 4.2(b) of the SA and Article XIX:1 of GATT 1994 because the United States neither demonstrated the causal connection between imports and serious injury nor distinguished injury caused by factors other than increased imports from injury caused by imports;
- Articles 3.1 and 4.2(c) of the SA because the report of the U.S. competent authorities was inadequate;
- Article 5.1 of the SA and Article XIX:1 of GATT 1994 because the United States applied the measure beyond the extent necessary to prevent or remedy serious injury;
- Article 5.2 of the SA and Article XIII of GATT 1994 because the allocation of the tariff-rate quota on steel slab was incorrect;
- Articles 2.1, 2.2, 4.2, and 5.1 of the SA because the United States included free trade agreement partners in its investigation but excluded them from the safeguard measures;
- Article 2.2 of the SA and Articles I, XIII, and XIX of GATT 1994 because the United States excluded its free trade agreement partners from the safeguard measures;
- Articles 9.1 of the SA and Article I:1 of GATT 1994 because the United States excluded developing countries in a discriminatory manner;
- Article II of the GATT 1994 because the United States withdrew concessions without justification under Article XIX of the GATT 1994;
- Article X:3 of the GATT 1994 because the United States did not administer its laws in a uniform, impartial, and reasonable manner;
- Article 12 of the SA because the United States failed to provide adequate opportunity for prior consultations with affected Members of the WTO; and
- Article 8.1 of the SA because the United States did not endeavor to maintain a substantially equivalent level of concessions with members of the WTO.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by U.S. mail, first class,

postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR0025@ustr.gov*, with ''Steel Safeguard Measures Dispute'' in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to 202–395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–248, Steel Safeguard Measures ROO Dispute) may be made by calling the Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Bruce R. Hirsh,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–20396 Filed 8–12–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending August 2, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13005.
Date Filed: July 31, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 ME 0108 dated 5 July 2002
TC2 Within Middle East Resolutions r1–r14
Minutes—PTC2 ME 0109 dated 30 July 2002
Tables—PTC2 ME FARES 0038 (RE–ISSUE) dated 9 July 2002
Intended effective date: 1 January 2003

Docket Number: OST–2002–13006.
Date Filed: July 31, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC Comp 0946 dated 30 July 2002
Composite Expedited Resolution 024d
Intended effective date: 1 September 2002.

Docket Number: OST–2002–13007.
Date Filed: July 31, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0947 dated 30 July 2002
Composite Expedited Resolution 210
Intended effective date: 1 October 2002

Docket Number: OST–2002–13008.
Date Filed: July 31, 2002.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0948 dated 30 July 2002
Composite Expedited Resolution 002hh
Intended effective date: 1 November 2002

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–20485 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending August 2, 2002

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's procedural regulations (See 14 CFR 301.201 *et seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2002–12987.

Date Filed: July 30, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 20, 2002.

Description: Application of USA Jet Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity to authorize it to engage in foreign charter air transportation of persons, property, and mail.

Docket Number: OST–2002–12989.

Date Filed: July 30, 2002.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 20, 2002.

Description: Application of USA Jet Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity to authorize it to engage in interstate charter air transportation of persons, property, and mail.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–20486 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review under 49 U.S.C. 41720 of United/US Airways Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice on Comment Procedures.

SUMMARY: The Department is giving interested persons an opportunity to submit comments by August 15, 2002, on agreements filed by United Air Lines and US Airways for Department review under 49 U.S.C. 41720. 67 FR 50745 (August 5, 2002). The Department wishes to provide additional information on its planned comment procedures.

DATES: All comments are due August 15, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: On July 25 United and US Airways submitted code-share and frequent flyer program reciprocity agreements for review under 49 U.S.C. 41720. We have invited interested persons to submit comments on the agreements. 67 FR 50745 (August 5, 2002). In response to the questions asked by some interested persons about the applicable procedures, we are issuing this notice to provide additional information on our treatment of the documents and on the agreement review process.

As we stated in our notice inviting comments, the statute, 49 U.S.C. 41720, requires certain types of agreements between major U.S. airlines to be submitted to the Department at least thirty days before they can be implemented. By publishing a notice in the **Federal Register**, we may extend the waiting period by 150 days with respect to a code-sharing agreement and by sixty days for the other types of agreements covered by the advance-filing requirement. Since the parties to such an agreement do not require our prior approval, they may implement their agreement at the end of the waiting period (either the thirty-day period or any extended period implemented by us). Blocking them from implementing their agreements would normally require a determination by us under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) that the agreements' implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section. Formal enforcement proceedings would be necessary to make such a determination.

When we have reviewed other agreements under 49 U.S.C. 41720, we have done so informally and have not invited public comment. However, due to the public interest in the agreements between United and US Airways, we decided to give interested persons an opportunity to submit comments as part of our informal review. All comments are due by August 15.

We have made the redacted copies of the agreements between United and US Airways available for reading and copying in room PL–401 of the Nassif Building, located at 400 7th St. SW., Washington, DC. We plan to make the comments public as well, although this is not a docketed matter, except to the extent that commenters request confidential treatment under our rules, 14 CFR 302.12. Commenters need not serve their comments on anyone else. While we are allowing public access to the comments, we are not requesting reply comments. We plan to use the comments and other information in our possession to determine whether the waiting periods should be extended and whether we should institute a formal proceeding to investigate whether the implementation of the United/US Airways agreements would constitute an unfair or deceptive practice or unfair method of competition that would violate 49 U.S.C. 41712.

Issued in Washington, DC on August 8, 2002.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 02–20441 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13027]

Great Lakes Pilotage Office Relocation Study

AGENCY: Coast Guard, DOT.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard will conduct a study to determine whether its Office of Great Lakes Pilotage should move from Washington, DC, to a location closer to the Great Lakes. It will do this to determine the best place from which to serve the public. The right choice should improve service to all concerned.

DATES: The study will begin August 27, 2002 with telephonic interviews of designated representatives of associations representing a broad spectrum of Great Lakes stakeholders. Written comments should reach the Docket Management Facility on or before September 12, 2002.

ADDRESSES: Please identify your comments and related material by the docket number of this rulemaking [USCG 2002–13027]. Then, to make sure they enter the docket just once, submit them by just one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

In choosing among these means, please give due regard to the recent difficulties with delivery of mail by the U.S. Postal Service to Federal facilities.

The Docket Management Facility maintains the public docket for this notice. Comments and related material received from the public, as well as documents mentioned in this Notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Wasserman, telephone 202–267–0093 or e-mail at *http://pwasserman@comdt.uscg.mil* for questions on the study. For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

Background: This study will weigh the benefits of moving the Office of Great Lakes Pilotage from its current location in Washington, DC, to a location near the Great Lakes. Should this study conclude that such a move is justified, the Coast Guard will examine suitable locations for the office near the

Great Lakes and make a final recommendation concerning where to relocate.

From 1960 to 1990, the Office of Great Lakes Pilotage was located in Cleveland, Ohio. In 1990, the Coast Guard moved the office to Washington, DC, to better serve the community. A review of Coast Guard's management and oversight of the Office completed this year, however, recommended that the Office be relocated to Massena, New York, where it would be closer to the pilotage community it regulates and to other government agencies (Saint Lawrence Seaway Development Corporation and the Canadian Great Lakes Pilotage Authority) that share regulatory responsibilities in the Great Lakes. Acting on this recommendation, the Coast Guard is conducting this study to determine whether the office should be relocated and, if so, to what location.

Study Process: The study will be conducted in four phases. Phase 1 will explore the benefits of relocating the function from Washington, DC, to a location closer to the Great Lakes. Phase 1 will include telephone interviews with the representatives of the following stakeholder associations: (1) St. Lawrence Seaway Pilots' Association; (2) Great Lakes District Council, International Longshoremen's Association; (3) American Great Lakes Ports' Association; (4) United States Great Lakes Shipping Association; (5) Lakes Pilots' Association, Inc.; and (6) Western Great Lakes Pilots' Association. In addition, phase 1 will include interviews with U.S. and Canadian governmental agencies that conduct business in the Great Lakes area, and will take into consideration public comments received in connection with this study.

If relocation is recommended, phase 2 will investigate suitable locations in the Great Lakes community. And in that case, phase 3 will develop a specific implementation plan. Phase 4 will examine whether the office should remain a unit of Coast Guard Headquarters or transferred to the Ninth Coast Guard District, with its headquarters in Cleveland.

The study will consider the specific effects of a relocation as they relate to: (1) Communications with the pilot associations, port authorities, shippers, agents, unions other stakeholders and interested parties; (2) Communications with other governmental entities, such as the St. Lawrence Seaway Development Corporation and the Canadian Great Lakes Pilotage Authority; and (3) Whether the Great Lakes Pilotage Office remains a Headquarters unit or is transferred to the Ninth Coast Guard District.

Dated: August 6, 2002.

Joseph J. Angelo,

Acting Assistant Commandant Marine Safety, Security And Environmental Protection.

[FR Doc. 02–20480 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2002–13067]

Requested Non-Availability Waiver

AGENCY: Maritime Administration, Department of Transportation (''MARAD'', ''we'', ''us'' or ''our'').

ACTION: Notice of requested administrative waiver of the Cargo Preference Act of 1954 to allow cargo carriage by a non-qualified U.S.-flag vessel in the absence of available qualified U.S.-flag vessels, with request for comments.

SUMMARY: The Cargo Preference Act of 1954, Pub. L. 83–664, 46 App. U.S.C. 1241(b), requires that at least 50 percent of Government-sponsored cargoes (75 percent with regard to certain agricultural exports) transported on ocean-going vessels be transported on certain U.S.-flag vessels when such vessels are available at a fair and reasonable rate for U.S.-flag commercial vessels. The statute excludes from eligibility to carry such cargoes foreign built or foreign rebuilt vessels or vessels previously registered under a foreign flag, unless the vessel has been registered under the United States flag for at least three years. Implicit in the statute is that we may waive the preference for qualified U.S.-flag vessels when they are not available. Here, we are inviting comments on how we should respond to a specific request to waive the Cargo Preference Act to allow U.S.-flag vessels which have not met the three year wait requirement to carry preference cargo when no fully qualified U.S.-flag vessel is available.

DATES: Submit comments on or before September 12, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–13067. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas W. Harrelson, Director, Office of Cargo Preference, MAR–580 Room 8118, 400 7th St., SW Washington, DC 20590. Telephone no. (202) 366–5515.

SUPPLEMENTARY INFORMATION: The Government of Israel, Ministry of Defense (GOI–MOD) purchases jet fuel from the Defense Security Cooperative Agency (DSCA) under the Foreign Military Sales Program. The cargo is subject to the Cargo Preference Act of 1954, but longstanding U.S. Government policy set forth in the DSCA manual requires 100 percent U.S.-flag carriage. GOI–MOD has expressed a concern that qualified U.S.-flag vessels may not be available in 2004 and beyond, due to many U.S.-flag tankers being retired under the Oil Pollution Act of 1990. Their efforts to conclude a multi-year contract with a U.S.-flag carrier were frustrated for this very reason earlier this year.

If foreign built tankers are entered into U.S. registry, they would be ineligible for three years to carry DSCA cargoes. However, the statute permits foreign vessels to carry such cargoes if no qualified U.S.-flag vessels are available. GOI–MOD is proposing that when qualified U.S.-flag vessels are not available, that instead of granting a waiver for a foreign vessel to carry the cargo, that we grant a waiver so that non-qualified U.S.-flag vessels can carry the cargo. From the national policy perspective of fostering a sufficient U.S. merchant marine employing U.S. citizen crew members, it would be preferable for U.S. sponsored cargoes to be carried by a non-qualified U.S.-flag vessel rather than a foreign-flag vessel.

By this notice, we are seeking public views on this proposal. Comments should refer to the docket number of this notice in order for us to properly consider the comments. After consideration of such views, we will decide the matter and publish our decision in this docket.

Dated: August 8, 2002.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–20487 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

[Docket No. TSA–2002–11602]

Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information; Security Programs for Foreign Air Carriers

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Notice.

SUMMARY: TSA invites public comment on a currently-approved information collection requirement concerning security programs for foreign air carriers, which will be submitted to OMB for renewal.

DATES: Send your comments on or before October 15, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number TSA–2002–11602 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Nouri Larbi, Security Regulation and Policy, Room 323, Transportation Security Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8543; facsimile (202) 267–5359, e-mail *nouri.larbi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy using the Internet through the DOT's public docket at *http://dms.dot.gov,* through the Government Printing Offices Web Page at *http://www.access.gpo.gov/su_docs/aces/aces140.html,* or through the TSA's Laws and Regulations Web Page at *http://www.tsa.gov/laws_regs/gov_index.shtm.*

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number previously mentioned at the beginning of this notice.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (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 valid OMB control number. With this notice, TSA solicits comments on the collection of information described below, in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew clearance of the following information collection:

Security Programs for Foreign Air Carriers, 49 CFR part 1546; 2110–0006. The Federal Aviation Administration initially required this collection under 14 CFR part 129 (now 49 CFR part 1546) and cleared under OMB control number 2120–0536. The responsibility for the collection has been transferred to TSA and assigned OMB control number 2110–0006. The information collected is used to determine compliance with 49 CFR part 1546 and to ensure passenger safety by monitoring foreign air carrier security procedures. These security programs establish procedures that foreign air carriers must carry out to protect persons and property against acts of criminal violence, aircraft piracy, and terrorist activities. The current estimated annual reporting burden is 5,193 hours.

Issued on August 8, 2002.

Tom Blank,

Associate Under Secretary for Security Regulation and Policy.

[FR Doc. 02–20484 Filed 8–12–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Senior Executive Service; Financial Management Service Performance Review Board

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB).

DATES: This notice is effective on August 13, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, 401 14th Street, SW., Washington, DC; telephone (202) 874–7000.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice is given of the appointment of individuals to serve as members of the Financial Management Service (FMS) Performance Review Board (PRB). The FMS PRB reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Four voting members constitute a quorum. The names and titles of the FMS PRB members are as followings:

Primary Members

Kenneth R. Papaj, Deputy Commissioner; Nancy C. Fleetwood, Assistant Commissioner, Information Resources; Bettsy H. Lane, Assistant Commissioner, Federal Finance; James Mills, Assistant Commissioner, Debt Management Service; Anthony Torrice, Assistant Commissioner, Regional Operations.

Alternate Members

Scott Johnson, Assistant Commissioner, Management (Chief Finance Officer); Donald J. Sturgill, Assistant Commissioner, Governmentwide Accounting Operations; Judith R. Tillman, Assistant Commissioner, Financial Operations.

Dated: August 7, 2002.

Kenneth R. Papaj,

Acting Commissioner.

[FR Doc. 02–20401 Filed 8–12–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1096

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1096, Annual Summary and Transmittal of U.S. Information Returns.

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internal (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Annual Summary and Transmittal of U.S. Information Returns.

OMB Number: 1545–0108.

Form Number: 1096.

Abstract: Form 1096 is used to transmit information returns (Forms 1099, 1098, 5498, and W–2G) to the IRS service centers. Under Internal Revenue Code section 6041 and related regulations, a separate Form 1096 is used for each type of return sent to the service center by the payer. It is used by IRS to summarize, categorize, and process the forms being filed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, Federal government, and State, local or tribal governments.

Estimated Number of Responses: 4,420,919.

Estimated Time Per Response: 14 min.

Estimated Total Annual Burden Hours: 1,016,812.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20488 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–45–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–45–91 (TD 8529), Limitations on Corporate Net Operating Loss Carryforwards. (§ 1.382–9).

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack (202) 622–3179, or through the internet *(Larnice.Mack@irs.gov)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1275.

Regulation Project Number: CO–45–91.

Abstract: Sections 1.382–9(d)(2)(iii) and (d)(4)(iv) of the regulation allow a loss corporation to rely on a statement by beneficial owners of indebtedness in determining whether the loss corporation qualifies for the benefits of Internal Revenue Code section 382(1)(5). Regulation section 1.382–9(d)(6)(ii) requires a loss corporation to file an election if it wants to apply the regulation retroactively, or revoke a prior Code section 382(1)(6) election.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 650.

Estimated Time Per Respondent: The estimated annual time per respondent with respect to the §§ 1.382–9(d)(2)(iii) and (d)(4)(iv) statements is 15 minutes. The estimated annual time per respondent with respect to the § 1.382–9(d)(6)(ii) election is 1 hour.

Estimated Total Annual Burden Hours: 200 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20489 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 941–M

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 941–M, Employer's Monthly Federal Tax Return.

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Employer's Monthly Federal Tax Return.

OMB Number: 1545–0718.

Form Number: 941–M.

Abstract: Form 941–M is used by certain employers to report payroll taxes on a monthly rather than a quarterly basis. Employers who have failed to file Form 941 or who have failed to deposit taxes as required are notified by the District Director that they must file Form 941–M monthly.

Current Actions: There are no changes being made to Form 941–M monthly.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 13 hr. 52 min.

Estimated Total Annual Burden Hours: 166,320.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 6, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20490 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–83–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–83–90 (8383), Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer (§ 301.7216–2(o)).

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

OMB Number: 1545–1209.

Regulation Project Number: IA–83–90.

Abstract: These regulations govern the circumstances under which tax return information any be disclosed for purposes of conducting quality or peer reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 250,000.

Estimated Time Per Recordkeeper: 1 hour.

Estimated Total Annual Recordkeeping Hours: 250,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20491 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–62–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–62–93 (TD 8688), Certain Elections Under the Omnibus Budget Reconciliation Act of 1993 (§§ 1.108–5, 1.163(d)–1, 1.1044(a)–1, and 1.6655(e)–1).

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Omnibus Budget Reconciliation Act of 1993.

OMB Number: 1545–1421.

Regulation Project Number: IA–62–93.

Abstract: These regulations established various elections enacted by the Omnibus Budget Reconciliation Act of 1993 (OBRA) and provided immediate interim guidance of the time and manner of making the elections. These regulations enable taxpayers to take advantage of various benefits provided by OBRA and the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 410,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 202,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 6, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20492 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8621

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8621, Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internal (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

OMB Number: 1545–1002.

Form Number: 8621.

Abstract: Form 8621 is filed by a U.S. shareholder who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount. recapture of the low-income housing credit.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 27 hr. 2 min.

Estimated Total Annual Burden Hours: 54,080.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20493 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8109, 8109–B, and 8109–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 8109 and 8109–B, Federal Tax Deposit Coupon, and Form 8109–C, FTD Address Change.

DATES: Written comments should be received on or before October 15, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Federal Tax Deposit Coupon (Forms 8109 and 8109–B) and FTD Address Change (Form 8109–C).

OMB Number: 1545–0257.

Form Numbers: 8109, 8109–B, and 8109–C.

Abstract: Federal tax deposit coupons (Forms 8109 and 8109–B) are used by taxpayers to deposit certain types of taxes at authorized depositaries or in certain Federal Reserve Banks. Form 8109–C, FTD Address Change, is used to change the address on the FTD coupon. The information on the deposit coupon is used by the IRS to monitor compliance with the deposit rules and insure that taxpayers are depositing the proper amounts within the proper time periods with respect to the different taxes imposed by the Internal Revenue Code.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Responses: 62,513,333.

Estimated Time Per Respondent: 2 minutes.

Estimated Total Annual Burden Hours: 1,841,607.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 7, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20494 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8693

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8693, Low-Income Housing Credit Disposition Bond.

DATES: Written comments should be received on or before October 15, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internal (*Larnice.Mack@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit Disposition Bond.

OMB Number: 1545–1029.

Form Number: 8693.

Abstract: Section 42(j)(6) of the Internal Revenue Code states that when a taxpayer disposes of a building (or an interest therein) on which the low-income housing credit has been claimed, the taxpayer may post a bond in lieu of paying the recapture tax if the building continues to be operated as a qualified low-income building for the remainder of the compliance period. For 8693 is used to post a bond under Code section 42(j)(6) to avoid recapture of the low-income housing credit.

Current Actions: There are no changes being made to Form 8693 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hr. 8 min.

Estimated Total Annual Burden Hours: 1,130.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 5, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–20495 Filed 8–12–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
August 13, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7229–7]

RIN 2060–AG56

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for miscellaneous metal parts and products surface coating operations located at major sources of hazardous air pollutants (HAP). The proposed standards would implement section 112(d) of the Clean Air Act (CAA) by requiring these operations to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The HAP emitted by these operations include xylene, toluene, methyl ethyl ketone (MEK), phenol, cresols/cresylic acid, 2-butoxyethanol, styrene, methyl isobutyl ketone (MIBK), ethyl benzene, and glycol ethers. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, eye, and mucus membranes, asthma, effects on the central nervous system, and cancer. In general, these findings have only been shown with concentrations higher than those typically in the ambient air. The proposed standards would reduce nationwide HAP emissions from major sources in this source category by approximately 48 percent.

DATES: *Comments.* Submit comments on or before October 15, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing, they should do so by September 2, 2002. If requested, a public hearing will be held within approximately 30 days following publication of this notice in the **Federal Register**.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–34, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–34, U.S. EPA, 401 M Street, SW., Room M–1500, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina. You should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946, to request to speak at a public hearing or to find out if a hearing will be held.

Docket. Docket No. A–97–34 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, 401 M Street, SW., Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Teal, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–5580; facsimile number (919) 541–5689; electronic mail (e-mail) address: *teal.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments

Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–97–34. 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: Ms. Kim Teal, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–7946 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Eck to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket

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

World Wide Web (WWW)

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

Regulated Entities

The proposed source category definition includes facilities that apply coatings to miscellaneous metal parts and products. Facilities that coat miscellaneous metal parts and products are covered under a wide range of Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes. Some examples of common product types included in this source category are listed in the following table. However, facilities classified under many other SIC or NAICS codes may be subject to the proposed standards if they meet the applicability criteria.

TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS

Category	SIC	NAICS	Examples of potentially regulated entities
Aerospace Equipment	3724	336413	Aircraft engines, aircraft parts, aerospace ground equipment.
	3728	336414	
	376X	336415	
		54171	
Automobile Parts	3711	335312	Engine parts, vehicle parts and accessories, brakes, axles, etc.
	3713	336111	
	3714	336211	
	3292	336312	
	3429	33632	
	3465	33633	
	3694	33634	
	3829	33637	
		336399	
Extruded Aluminum	3354	331316	Extruded aluminum, architectural components, coils, rod, and tubes.
	3365	331524	
	3442	332321	
	3446	332323	
Heavy Equipment	3511	33312	Tractors, earth moving machinery.
	3519	333611	
	352X	333618	
	353X	.....	
Job Shops	3441	332312	Any of the products from the miscellaneous metal parts and products segments.
	3471	332722	
	3499	332813	
	3999	332991	
		332999	
		334119	
		336413	
		339999	
Large Trucks and Buses	3711	33612	Large trucks and buses.
	3713	336211	
	3716	.....	
Magnet Wire	3351	331319	Magnet wire.
	3357	331422	
		335929	
Metal Buildings	3448	332311	Prefabricated metal: buildings, carports, docks, dwellings, greenhouses, panels for buildings.
Metal Containers	2655	33242	Drums, kegs, pails, shipping containers.
	3089	81131	
	3325	322214	
	3412	326199	
	3443	331513	
	5085	332439	
Metal Pipe and Foundry	331X	331111	Plate, tube, rods, nails, spikes, etc.
	332X	331513	
	336X	33121	
	3399	331221	
		331511	
Rail Transportation	3731	33651	Brakes, engines, freight cars, locomotives.
	3743	336611	
	4011	482111	
	4741	.....	
Recreational Vehicles	3083	3369	Motorcycles, motor homes, semitrailers, truck trailers.
	3354	331316	
	3713	336991	
	3714	336211	
	3716	336112	
	375X	336213	
	3792	336214	
		336399	
Rubber-to-Metal Products	3061	326291	Engine mounts, rubberized tank tread, harmonic balancers.
	3069	326299	
	3479	.....	
Structural Steel	3441	332311	Joists, railway bridge sections, highway bridge sections.

TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS—Continued

Category	SIC	NAICS	Examples of potentially regulated entities
Other Transportation Equipment	3448 3711 3519 3714 3715 3795 3621	332312 336212 336999 33635 56121 8111 56211	Miscellaneous transportation related equipment and parts.

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 coating operation is regulated by this action, you should examine the applicability criteria in § 63.3881 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What are the health effects associated with HAP emissions from the surface coating of miscellaneous metal parts and products?
II. Summary of the Proposed Rule
A. What source categories are affected by the proposed rule?
B. What is the relationship to other rules?
C. What are the primary sources of emissions and what are the emissions?
D. What is the affected source?
E. What are the emission limits, operating limits, and other standards?
F. What are the testing and initial compliance requirements?
G. What are the continuous compliance provisions?
H. What are the notification, recordkeeping, and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category?
B. How did we select the regulated pollutants?
C. How did we select the affected source?
D. How did we determine the basis and level of the proposed standards for existing and new sources?
E. How did we select the format of the proposed standards?
F. How did we select the testing and initial compliance requirements?
G. How did we select the continuous compliance requirements?
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I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Miscellaneous Metal Parts and Products (Surface Coating) category of major sources was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. Major sources of HAP are those that emit or have the potential to emit equal to or greater than 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new 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 the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With HAP Emissions From the Surface Coating of Miscellaneous Metal Parts and Products?

The HAP emitted from the surface coating of miscellaneous metal parts and products include xylene, toluene, MEK, phenol, cresols/cresylic acid, 2-butoxyethanol, styrene, MIBK, ethyl benzene, and glycol ethers. These compounds account for about 90 percent of the nationwide HAP emissions from this source category. The HAP that would be controlled with the proposed rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.,* irritation of the lung, eyes, and mucus membranes and

effects on the central nervous system) and acute health disorders (*e.g.,* lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the central nervous system).

We do not have the type of current detailed data on each of the facilities covered by the proposed emission standards for this source category and the people living around the facilities that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed rule would reduce emissions and subsequent exposures.

II. Summary of the Proposed Rule

A. What Source Categories Are Affected by the Proposed Rule?

The proposed rule would apply to you if you own or operate a miscellaneous metal parts and products surface coating facility that uses at least 250 gallons of coating materials per year and is a major source, or is located at a major source, or is part of a major source of HAP emissions. We have defined a miscellaneous metal parts and products surface coating facility as any facility engaged in the surface coating of any metal part or product that is not included in the definition of the affected source in NESHAP for another source category. The proposed rule would also apply to the surface coating of the plastic contained in parts and products that are pre-assembled from plastic and metal components, where greater than 50 percent of the coatings (by volume, determined on a rolling 12-month basis) are applied to the metal surfaces, and where the surface coating of the metal surfaces is subject to the proposed rule. If your source is subject to the proposed rule and you can demonstrate that more than 50 percent of your coatings are applied to the metal surfaces of pre-assembled plastic and metal components, then compliance with the proposed rule constitutes compliance with the plastic parts and products surface coating NESHAP currently under development. You must maintain records (such as coating usage or surface area) to document that more than 50 percent of the coatings are applied to metal surfaces.

You would not be subject to the proposed rule if your miscellaneous metal parts and products surface coating facility is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through your permitting authority.

The proposed rule also does not apply to surface coating conducted at a source that uses only coatings, thinners, and cleaning materials that contain no organic HAP, as determined according to the provisions in the proposed rule.

The source category does not include research or laboratory facilities; janitorial, building, and facility maintenance operations; or hobby shops that are operated for personal rather than for commercial purposes. The source category also does not include coating applications using handheld non-refillable aerosol containers.

Also included on the July 16,1992 source category list (57 FR 31576) were major sources emitting HAP from ''asphalt/coal tar application-metal pipes'' (hereafter referred to as asphalt coating). In developing the proposed rule, we decided not to establish MACT standards separately for the asphalt coating category but, rather, to include asphalt coating of metal pipes in the source category for coating of miscellaneous metal parts and products. Data and information gathered from the asphalt coating industry indicate that the equipment, emission characteristics, and applicable emission reduction measures are similar to the broad group of miscellaneous metal sources. Therefore, we are including asphalt coating in the proposed rule.

We believe it is technically feasible to regulate emissions from a variety of metal coating operations by a single rule. Many of the metal coating operations that we are proposing to regulate are collocated within individual facilities. Facilities with collocated metal coating operations could more easily comply with a single rule than with individual rules for each of the collocated operations. Several industry representatives also expressed interest in a generic rule that would specify consistent requirements for a wide range of coating operations. Another reason to develop a single rule to regulate metal coating operations is that it is more efficient and less costly to develop a single rule than to develop separate rules for several individually listed source categories which have similar emission characteristics and applicable emission reduction measures. A single rule will ensure that coating operations with comparable HAP emissions and emission reduction measures are subject to the same requirements. In addition, compliance and enforcement activities would be more efficient and less costly.

B. What Is the Relationship to Other Rules?

Affected sources subject to the proposed rule may also be subject to other rules if they perform surface coating of products that are included in another source category. If you own or operate an affected source that is subject to the proposed rule and at the same affected source you also perform surface coating that is subject to any other NESHAP, you may choose to be subject to the requirements of the more stringent of the NESHAP for the entire surface coating affected source. If you choose to comply with the requirements of more stringent NESHAP and you demonstrate that the resulting HAP emission level (tpy) would be less than or equal to that achieved by complying separately with all applicable subparts, compliance with the more stringent NESHAP will constitute compliance with the requirements of the proposed rule. We specifically request comments on how monitoring, recordkeeping, and reporting requirements can be consolidated for sources that are subject to more than one rule.

C. What Are the Primary Sources of Emissions and What Are the Emissions?

HAP Emission Sources

Emissions from coating applications account for approximately 80 percent of the HAP emissions from miscellaneous metal parts and products surface coating operations. The remaining emissions are primarily from cleaning operations. In most cases, HAP emissions from mixing and storage are relatively small. The organic HAP emissions associated with coatings (the term ''coatings'' includes protective and decorative coatings as well as adhesives) occur at several points. Coatings are most often applied either by using a spray gun in a spray booth or by dipping the substrate in a tank containing the coating. In a spray booth, volatile components evaporate from the coating as it is applied to the part and from the overspray. The coated part then passes through an open (flash-off) area where additional volatiles evaporate from the coating. Finally, the coated part passes through a drying/curing oven, or is allowed to air dry, where the remaining volatiles are evaporated.

Organic HAP emissions also occur from the activities undertaken during cleaning operations, where solvent is

used to remove coating residue or other unwanted materials. Cleaning in this industry includes cleaning of spray guns and transfer lines (*e.g.*, tubing or piping), tanks, and the interior of spray booths. Cleaning also includes applying solvents to manufactured parts prior to coating application and to equipment (*e.g.*, cleaning rollers, pumps, conveyors, *etc.*).

Mixing and Storage

Organic HAP emissions can also occur from displacement of organic vapor-laden air in containers used to store HAP solvents or to mix coatings containing HAP solvents. The displacement of vapor-laden air can occur during the filling of containers and can be caused by changes in temperature or barometric pressure, or by agitation during mixing.

Organic HAP

Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from the surface coating of miscellaneous metal parts and products include xylene, toluene, MEK, phenol, cresols/cresylic acid, 2-butoxyethanol, styrene, MIBK, ethyl benzene, and glycol ethers. These compounds account for approximately 90 percent of this category's nationwide organic HAP emissions.

Inorganic HAP

Based on information reported in survey responses during the development of the proposed NESHAP, inorganic HAP, including chromium, cobalt, lead, and manganese compounds, are components of some coatings used by this source category. No inorganic HAP were reported in cleaning materials. Most of the inorganic HAP components remain as solids in the dry coating film on the parts being coated or are deposited onto the walls, floor, and grates of the spray booths in which they are applied. Some of the inorganic HAP particles are entrained in the spray booth exhaust air. Spray booths in the miscellaneous metal parts and products industry typically have either water curtains or dry filters to remove overspray particles. Therefore, inorganic HAP emission levels are expected to be very low and have not been quantified.

D. What Is the Affected Source?

We define an affected source as a stationary source, a group of stationary sources, or part of a stationary source to which a specific emission standard applies. The proposed standards define the affected source as the collection of all operations associated with the surface coating of miscellaneous metal parts and products. These operations include preparation of a coating for application (*e.g.*, mixing with thinners); surface preparation of the miscellaneous metal parts and products (including paint stripping for the purpose of preparing a substrate for the application of a coating); coating application and flash-off; drying and/or curing of applied coatings; cleaning of equipment used in surface coating; storage of coatings, thinners, and cleaning materials; and handling and conveyance of waste materials from the surface coating operations. The coating operation does not include the application of coatings using hand-held aerosol containers.

E. What Are the Emission Limits, Operating Limits, and Other Standards?

Emission Limits

We are proposing to limit organic HAP emissions from each affected source as specified in the following tables. For each of the subcategories (defined in the proposed standards), the emission limit is expressed as the mass of HAP emissions per volume of coating solids used during each 12-month compliance period.

TABLE 2.—EMISSION LIMITS FOR NEW AND RECONSTRUCTED AFFECTED SOURCES

Coating type	Emission limit (kg HAP/liter of coating solids)	Emission limit (lbs HAP/gallon of coating solids)
General Use Subcategory:		
• General Use Coatings	0.23	1.94
• High Performance Coatings	3.30	27.54
Magnet Wire Subcategory	0.05	0.44
Rubber-to-Metal Subcategory	0.82	6.80

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

Coating type	Emission limit (kg HAP/liter of coating solids)	Emission limit (lbs HAP/gallon of coating solids)
General Use Subcategory:		
• General Use Coatings	0.31	2.60
• High Performance Coatings	3.30	27.54
Magnet Wire Subcategory	0.12	1.00
Rubber-to-Metal Subcategory	4.50	37.70

The proposed standards contain provisions that allow you to calculate a facility-specific emission limit if your facility is in the general use subcategory and applies both general use and high performance coatings. The facility-specific limit is a weighted average emission limit based on the relative percentages of each coating type you use during the compliance period.

You can choose from several compliance options in the proposed rule to achieve the emission limits. You could comply by applying materials (coatings, thinners, and cleaning materials) that meet the emission limits, either individually or collectively, during each compliance period. You could also use a capture system and add-on control device to meet the emission limits. You could also comply by using a combination of both approaches.

Operating Limits

If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the proposed operating limits would apply to you. These limits are site-specific parameter limits that you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures, you would establish average volumetric flow rates or duct static pressure limits for each capture device (or enclosure) in each capture system. For capture systems that are permanent total enclosures, you would establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you would monitor the combustion temperature. For catalytic oxidizers, you would monitor the temperature immediately before and after the catalyst bed, or you would monitor the temperature before the catalyst bed and implement a site-specific inspection and maintenance

plan for the catalytic oxidizer. For carbon adsorbers for which you do not conduct a liquid-liquid material balance, you would monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers, you would monitor the outlet gas temperature from the condenser.

The site-specific parameter limits that you establish must reflect operation of the capture system and control devices during a performance test that demonstrates achievement of the emission limits during representative operating conditions.

Work Practice Standards

If you use an emission capture system and control device for compliance, you would be required to develop and implement a work practice plan to minimize organic HAP emissions from mixing operations, storage tanks and other containers, and handling operations for coatings, thinners, cleaning materials, and waste materials. The work practice plan must include steps to ensure that, at a minimum: all organic HAP coatings, thinners, cleaning materials, and waste materials are stored in closed containers; spills of organic HAP coatings, thinners, cleaning materials, and waste materials are minimized; organic HAP coatings, thinners, cleaning materials, and waste materials are conveyed from one location to another in closed containers or pipes; mixing vessels which contain organic HAP coatings and other materials are closed except when adding to, removing, or mixing the contents; and emissions of organic HAP are minimized during cleaning of storage, mixing, and conveying equipment.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan may be used to satisfy the requirement for a work practice plan.

Operations During Startup, Shutdown, or Malfunction

If you use a capture system and control device for compliance, you would be required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during periods of startup, shutdown, or malfunction of the capture system and control device.

General Provisions

The NESHAP General Provisions (40 CFR part 63, subpart A) also would apply to you as indicated in the proposed standards. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting and recordkeeping, performance testing, and monitoring. The proposed standards refer to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the proposed standards, all of the applicable General Provisions requirements would apply to you.

F. What Are the Testing and Initial Compliance Requirements?

Compliance Dates

Existing affected sources would have to be in compliance with the final standards no later than [DATE 3 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. New and reconstructed sources would have to be in compliance upon startup of the affected source or no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is later.

The proposed initial compliance period begins on the applicable compliance date and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. We have defined ''month'' as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period. Being ''in compliance'' means that the owner or operator of the affected source meets the requirements to achieve the proposed emission limitations by the end of the initial compliance period. At the end of the initial compliance period, the owner or operator would use the data and records generated to determine whether or not the affected source is in compliance for that period. If the affected source does not meet the applicable limits and other requirements, it is out of compliance for the entire initial compliance period.

Emission Limits

There are several options for complying with the proposed emission limits, and the testing and initial compliance requirements vary accordingly.

Option 1: Compliance Based on Materials Used in the Affected Source

If you demonstrate compliance based on the materials used, you would determine the mass of organic HAP and the volume fraction of coating solids in all materials used during the compliance period.

To determine the mass of organic HAP in coatings, thinners, and cleaning materials and the volume fraction of coating solids, you could either rely on manufacturer's data or on results from the test methods listed below. You may use alternative test methods provided you get EPA approval in accordance with the NESHAP General Provisions, 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes.

- For organic HAP content, use Method 311 of 40 CFR part 63, appendix A.
- The proposed rule allows you to use nonaqueous volatile matter as a surrogate for organic HAP, which would include all organic HAP plus all other organic compounds, and excluding water. If you choose this option, use Method 24 of 40 CFR part 60, appendix A.
- For volume fraction of coating solids, use either Equation 1 in § 63.3941 of the proposed rule, ASTM Method D2697–86 (1998), or ASTM Method D6093–97.

To demonstrate initial compliance based on the materials used, you would be required to demonstrate that either the organic HAP content of each coating meets the emission limits and that you use no organic HAP-containing thinners or cleaning materials, or that the total mass of organic HAP in all coatings, thinners, and cleaning materials divided by the total volume of coating solids meets the emission limits. For the latter option, you would be required to:

- Determine the quantity of each coating, thinner, and cleaning material used.
- Determine the mass of organic HAP in each coating, thinner, and cleaning material.
- Determine the volume fraction of coating solids for each coating.
- Calculate the total mass of organic HAP in all materials and the total volume of coating solids for the compliance period. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.

• Calculate the ratio of the total mass of organic HAP for the materials used to the total volume of coating solids used.

• Record the calculations and results and include them in your Notification of Compliance Status.

Option 2: Compliance Based on Using a Capture System and Add-On Control Device

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and initial compliance requirements are as follows:

• Conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis. The performance test would have to be completed no later than the compliance date for existing sources and 180 days after the compliance date for new and reconstructed sources. You would also need to schedule it in time to obtain the results for use in completing your compliance determination for the initial compliance period.

• Determine the mass of organic HAP in each material and the volume fraction of coating solids for each coating used during the initial compliance period.

• Calculate the organic HAP emissions from the controlled coating operations using the capture and control efficiencies determined during the performance test and the total mass of organic HAP in materials used in controlled coating operations.

• Calculate the ratio of the total mass of HAP emissions to the total volume of coating solids used during the initial compliance period.

• Record the calculations and results and include them in your Notification of Compliance Status.

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, you would determine both the efficiency of the capture system and the emission reduction efficiency of the control device. To determine the capture efficiency, you would either verify the presence of a permanent total enclosure using EPA Method 204 of 40 CFR part 51, appendix M (and all materials must be applied and dried within the enclosure), or use one of three protocols in § 63.3965 of the proposed rule to measure capture efficiency. If you have a permanent total enclosure and all materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, you would assume 100 percent capture.

To determine the emission reduction efficiency of the control device, you would conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

• Method 1 or 1A for selection of the sampling sites.

• Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate.

• Method 3, 3A, or 3B for gas analysis to determine dry molecular weight.

• Method 4 to determine stack moisture.

• Method 25 or 25A to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you would be required to measure the amount of all materials used in the affected source during the compliance period and determine the total volatile matter contained in these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system during the compliance period. Then you would compare the amount recovered to the amount used to determine the overall control efficiency and apply this efficiency to the organic HAP-to-coating solids ratio for the materials used. You would record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits

As mentioned above, you would establish operating limits as part of the initial performance test of a capture system and control device other than a solvent recovery system for which you conduct liquid-liquid material balances. The operating limits are the minimum or maximum (as applicable) values achieved for capture systems and control devices during the most recent performance test that demonstrated compliance with the emission limits. If you operate your capture system and control device at different sets of representative operating conditions, you must establish operating limits for the parameters for each different operating condition.

The proposed rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.3968 of the proposed rule. If you use control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal or catalytic oxidizer, you would continuously monitor the appropriate temperature and record it at least every 15 minutes. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or above this limit. For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. The operating limits would be the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed during the performance test, and for each 3-hour period the average temperature and the average temperature difference would have to be at or above these limits. As an alternative method for catalytic oxidizers, you would continuously monitor the temperature immediately before the catalyst bed and record it at least every 15 minutes. The operating limit would be the average temperature just before the catalyst bed during the performance test, and for each 3-hour period the average temperature would have to be at or above these limits. As part of the alternative method, you must also develop and implement an inspection and maintenance plan for your catalytic oxidizer.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser, you would monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test, and for each consecutive 3-hour period the average temperature would have to be at or below this limit.

For each capture system that is not a permanent total enclosure, you would establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test, to be met as a minimum. For each capture system that is a permanent total enclosure, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inches water.

Work Practices

If you use the emission rate with add-on controls option, you would be required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. You would have to make the plan available for inspection if the Administrator requests to see it.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan may be used to satisfy the requirement for a work practice plan.

Operations During Startup, Shutdown, or Malfunction

If you use a capture system and control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

G. What Are the Continuous Compliance Provisions?

Emission Limits

If you demonstrate compliance with the proposed emission limits based on the materials used, you would demonstrate continuous compliance if, for each compliance period, the ratio of organic HAP to coating solids is less than or equal to the emission limits. A compliance period consists of 12 months. Each month after the end of the initial compliance period is the end of a compliance period consisting of that month and the preceding 11 months. You would follow the same procedures for calculating the organic HAP to coating solids ratio that you used for the initial compliance period.

For each coating operation on which you use a capture system and control device other than solvent recovery for which you conduct a liquid-liquid material balance, you would use the continuous parameter monitoring results for the compliance period in determining the mass of organic HAP emissions. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the control device, you would assume the capture system and control device are achieving the same percent emission reduction efficiency as they did during the most recent performance test in which compliance was demonstrated. You would then apply this percent reduction to the total mass of organic HAP in materials used in controlled coating operations to determine the compliance period emission rate from those operations. If there were any deviations from the operating limits during the compliance period or any bypasses of the control device, you would account for them in the calculation of the compliance period emission rate by assuming the capture system and control device were achieving zero emission reduction during the periods of deviation.

For each coating operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each compliance period, you would use the liquid-liquid material balance to determine control efficiency. To determine the overall control efficiency, you must measure the amount of all materials used during each compliance period and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the compliance period, calculate the overall control efficiency, and apply it to the total mass of organic HAP in the materials used to determine total organic HAP emissions.

Operating Limits

If you use a capture system and control device, the proposed rule would require you to achieve on a continuous basis the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and control device are operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture system and control device that allow emissions to bypass the control device, you would have to demonstrate that HAP emissions from each emission point within the affected source are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;
- Valve closure continuous monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or
- Automatic shutdown system to stop the coating operation when flow is diverted from the control device.

If the bypass monitoring procedures indicate that emissions are not routed to the control device, you have deviated from the emission limits.

Work Practice Plan

If you use the emission rate with add-on controls option, you would be required to implement, on an ongoing basis, the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, this would be a deviation from the work practice standard.

Operations During Startup, Shutdown, and Malfunction

If you use a capture system and control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, and malfunction of the capture system and control device.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the proposed rule. The General Provisions notification requirements include: Initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The

General Provisions also require certain records and periodic reports.

Initial Notifications

If the proposed standards apply to you, you must send a notification to the EPA Regional Office in the region where your facility is located and to your State agency, no later than 1 year after the effective date for existing sources and no later than 120 days after the date of initial startup for new and reconstructed sources, or 120 days after publication of the final rule, whichever is later. That report notifies us and your State agency that you have an existing facility that is subject to the proposed standards or that you have constructed a new facility. Thus, it allows you and the permitting authority to plan for compliance activities. You would also need to send a notification of planned construction or reconstruction of a source that would be subject to the proposed rule and apply for approval to construct or reconstruct.

Notification of Performance Test

If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you would conduct a performance test. The performance test would be required no later than the compliance date for an existing affected source, and no later than 180 days after startup or 180 days after publication of the final rule, whichever is later, for a new or reconstructed source. You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin and submit a report of the performance test results no later than 60 days after the test as indicated in the General Provisions for the NESHAP.

Notification of Compliance Status

Your compliance procedures would depend on which compliance option you choose. For each compliance option, you would send us a Notification of Compliance Status within 30 days after the end of the initial compliance period. In the notification, you would certify whether the affected source has complied with the proposed standards, identify the option(s) you used to demonstrate initial compliance, summarize the data and calculations supporting the compliance demonstration, and describe how you will determine continuous compliance.

If your facility is subject to the proposed standards and to NESHAP for another surface coating source category and you have chosen to comply with the more stringent of the standards for the entire facility, your notification would include a certification to that effect. You would also submit documentation that the resulting HAP emission levels are less than or equal to the level that would be achieved by complying with each applicable NESHAP.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification would also include the measured range of each monitored parameter and the operating limits established during the performance test, and information showing whether the source has complied with its operating limits during the initial compliance period.

Recordkeeping Requirements

You would be required to keep records of reported information and all other information necessary to document compliance with the proposed rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3 years' records may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option that you choose, you may need to keep records of the following:

- Organic HAP content, volatile matter content, coating solids content, and quantity of the coatings, thinners, and cleaning materials used during each compliance period; and
- All documentation supporting initial notifications and notifications of compliance status.

If you demonstrate compliance by using a capture system and control device, you would also need to keep records of the following:

- The occurrence and duration of each startup, shutdown, or malfunction of the emission capture system and control device;
- All maintenance performed on the capture system and control device;
- Actions taken during startup, shutdown, and malfunction that are different from the procedures specified in the affected source's SSMP;
- All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed;
- All information necessary to demonstrate conformance with the affected source's plan for minimizing emissions from mixing, storage, and waste handling operations;
- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods);
- All required measurements needed to demonstrate compliance with the standards; and
- All results of performance tests.

The proposed rule would require you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits, operating limits, or work practice standards.

Deviations, as determined from these records, would need to be recorded and also reported. A deviation is any instance when any requirement or obligation established by the proposed rule, including but not limited to, the emission limits, operating limits, and work practice standards, is not met.

If you use a capture system and control device to reduce HAP emissions, you would have to make your SSMP available for inspection if the Administrator requests to see it. It would stay in your records for the life of the affected source or until the source is no longer subject to the proposed standards. If you revise the plan, you would need to keep the previous superseded versions on record for 5 years following the revision.

Periodic Reports

Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you would include them in the report as follows:

- Report each deviation from the emission limitations that apply to you.
- If you are complying by using a thermal oxidizer, report all times when a consecutive 3-hour average temperature is below the operating limit.
- If you are complying by using a catalytic oxidizer, report all times when a consecutive 3-hour average temperature difference across the catalyst bed is below the operating limit and also report all times when a 3-hour average temperature before the catalyst bed is below the operating limit.
- If you are complying by using oxidizers, or solvent recovery systems where liquid-liquid material balances are not conducted, report all times when the value of the site-specific operating parameter used to monitor the capture system performance was less than the

operating limit established for the capture system.

• If you are complying by using a carbon adsorber for which you do not conduct liquid-liquid material balances, report all times when the steam or nitrogen flow is less than the operating limit and also report all times when the carbon bed temperature is more than the operating limit.

• If you are complying by using a condenser, report all times when a 3-hour average outlet temperature is higher than the operating limit.

• If your capture system contains bypass lines that could divert emissions from the control device to the atmosphere, report all times when emissions were not routed to the control device.

• Report other specific information on the periods of time the deviations occurred.

You would also have to include an explanation in each semiannual report if a change occurs that might affect the compliance status of the affected source, or you change to another option for meeting the emission limit.

Other Reports

You would be required to submit reports for periods of startup, shutdown, and malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your plan, you would report those procedures with your semiannual reports in addition to immediate reports required by § 63.10(d)(5)(ii) of the General Provisions. You must also submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category?

The surface coating of miscellaneous metal parts and products is a source category that is on the list of source categories to be regulated because it contains major sources which emit or have the potential to emit at least 9.7 Mg (10 tons) of any one HAP or at least 22.7 Mg (25 tons) of any combination of HAP annually. The proposed rule would control HAP emissions from both new and existing major sources. Area sources are not being regulated under the proposed rule.

The surface coating of miscellaneous metal parts and products as described in the listing includes any facility engaged in the surface coating of miscellaneous metal parts or products. We have used product lists contained in the SIC and NAICS code descriptions to describe examples of the vast array of miscellaneous metal parts and products.

We intend the source category to include facilities for which the surface coating of miscellaneous metal parts and products is either their principal activity or an integral part of a production process that is the principal activity. Most coating operations are located at plant sites that are dedicated to these activities. However, some may be located at sites for which some other activity is principal. Collocated surface coating operations comparable to the types and sizes of the dedicated facilities, in terms of the coating operation and applicable emission control techniques, are included in the source category.

The source category does not include research or laboratory facilities; janitorial, building, and facility maintenance operations; or hobby shops where surface coating is performed for noncommercial purposes.

B. How Did We Select the Regulated Pollutants?

Organic HAP

Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from the surface coating of miscellaneous metal parts and products include xylene, toluene, MEK, phenol, cresols/cresylic acid, 2-butoxyethanol, styrene, MIBK, ethyl benzene, and glycol ethers. These compounds account for approximately 90 percent of this category's nationwide organic HAP emissions. However, many other organic HAP are used, or can be used, in miscellaneous metal parts and products coatings, thinners, and cleaning materials. Therefore, the proposed rule would regulate emissions of all organic HAP.

Inorganic HAP

Although most of the coatings used in this source category do not contain inorganic HAP, some special purpose coatings used by this source category do contain inorganic HAP such as chromium, cobalt, lead, and manganese. Emissions of these materials to the atmosphere are minimal because the facilities in this source category employ either water curtains or dry filters that remove overspray particles from the spray booth exhaust. At this time, it does not appear that emissions of inorganic HAP from this source category warrant Federal rulemaking.

C. How Did We Select the Affected Source?

In selecting the affected source(s) for emission standards, our primary goal is to ensure that MACT is applied to HAP-emitting operations or activities within the source category being regulated. The affected source also serves to establish where new source MACT applies under a particular standard. Specifically, the General Provisions in subpart A of 40 CFR part 63 define the terms ''construction'' and ''reconstruction'' with reference to the term ''affected source'' (40 CFR 63.2) and provide that new source MACT applies when construction or reconstruction of an affected source occurs (40 CFR 63.5). The collection of equipment and activities evaluated in determining MACT (including the MACT floor) is used in defining the affected source.

When an emission standard is based on a collection of emissions sources or total facility emissions, we select an affected source based on that same collection of emission sources or the total facility as well. This approach for defining the affected source broadly is particularly appropriate for industries where a plantwide emission standard provides the opportunity and incentive for owners and operators to utilize control strategies that are more cost effective than if separate standards were established for each emission point within a facility.

Selection of Affected Source

The affected source for the proposed standards is broadly defined to include all operations associated with the coating of miscellaneous metal parts and products and the cleaning of product substrates or coating operation equipment. These operations include storage and mixing of coatings and other materials; surface preparation of the miscellaneous metal parts and products prior to coating application; coating application and flash-off, drying and curing of applied coatings; cleaning operations; and waste handling operations.

In selecting the affected source, we considered, for each operation, the extent to which HAP-containing materials are used and the amount of HAP that are emitted. Cleaning and coating application, flash-off, and curing/drying operations account for the majority of HAP emissions at miscellaneous metal parts and products surface coating operations. These operations are included in the affected source.

We were not able to obtain data to adequately quantify HAP emissions from storage, mixing, and waste handling. However, solvents that are added to coatings as thinners and other HAP-containing additives to coatings may be emitted during mixing and storage. The level of emissions depends on the type of mixing and the type of storage container and the work practices used at the facility. Emissions from waste handling operations depend on the type of system used to collect and transport organic HAP-containing waste coatings, thinners, and cleaning materials in the facility. For example, solvent-laden rags that are used to clean spray booths or tanks could be a source of HAP emissions. The method used to isolate and store such rags affects the level of emissions to ambient air. Mixing, storage, and waste handling operations are included in the affected source.

A broad definition of the affected source was selected to provide maximum flexibility in complying with the proposed emission limits for organic HAP. In planning its total usage of HAP-containing materials, each facility can select among available coatings, thinners, and cleaning materials to comply with the proposed limits.

Additional information on the miscellaneous metal parts and products surface coating operations selected for rulemaking, and other operations, are included in the docket for the proposed standards.

D. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

The sections below present the rationale for determining the MACT floor, regulatory alternatives beyond the floor, and selection of the proposed standards for existing and new affected sources.

After we identify the specific source categories or subcategories of sources to regulate under section 112 of the CAA, we must develop emission standards for each category and subcategory. Section 112(d)(3) establishes a minimum baseline or ''floor'' for standards. For new sources in a category or subcategory, the standards cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The 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 (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

The miscellaneous metal parts and products surface coating source category includes facilities that coat metal parts and products which are not applicable to other specific surface coating MACT source categories. This source category comprises numerous diverse operations that apply surface coatings to metal parts and products including, but not limited to, railroad cars, medical equipment, electronic equipment, wheelbarrows, magnet wire, heavy duty trucks, hardware, power tools, pipes, structural steel, sporting goods, lawn mowers, bicycles, auto parts, musical instruments, steel drums, army tanks, and industrial machinery. In addition, a wide variety of coating technologies and application methods are employed across all these industry segments. Nationwide, there are thousands of facilities involved in coating of miscellaneous metal parts and products, with an estimated 1,500 or more being classified as major sources. Because of the diversity of the products coated and the coating technologies and application methods employed, identification of the top performing facilities in this category is inherently difficult, especially since the control techniques that make these facilities the top performers must be transferrable to other facilities in the category. Consequently, it has been necessary to employ innovation in developing a regulatory approach for this category that provides significant emission reductions while being achievable across the source category.

There are no existing Federal or State regulations requiring control of HAP emissions from this category. Reasonably available control technology (RACT) requirements have been in place for reduction of volatile organic compound (VOC) emissions from this category since the late 1970's and may have resulted in some degree of coincidental reductions in HAP emissions. However, since the RACT requirements generally apply only to facilities located in ozone nonattainment areas, and many States have applicability thresholds for the RACT requirements, there are a great number of unregulated miscellaneous metal parts and products facilities remaining.

To gather data to support the development of the proposed rule, we utilized written requests for information submitted to owners and operators of facilities within the source category. The results of a two-page screening survey sent to approximately 3,000 facilities were used to identify major and synthetic minor sources that perform coating operations on miscellaneous metal parts and products. This list was augmented with names of facilities provided by trade associations and resulted in a list of 312 corporate owners to which a subsequent, more detailed survey was distributed.

The detailed survey resulted in responses from 639 major and synthetic minor sources. Of the facilities responding to the survey, only 332 submitted data of sufficient quality to perform some degree of analysis on coating material usage.

We explored various approaches to determining the MACT floor and eventual regulatory strategy based on the data obtained from our data gathering efforts. From the outset, the various facilities were grouped into industry ''segments'' based on the type of products coated. This was done to identify trends among the segments and to indicate whether one or more segments were influencing the floor determination. It also enabled the stakeholders to more easily check the results for their respective industry segments and give us feedback on the apparent accuracy of the information reported.

One approach considered in an effort to minimize the effect of the extreme diversity of the miscellaneous metal parts and products source category was to develop MACT floors using a ''coating category'' approach. In the coating category approach, the specific industry and the part or product coated had no bearing on the analysis. For this analysis, coatings would be grouped according to their type (primers, color coats, top coats, clear coats, adhesives, *etc.*) along with the thinners and additives specified for their use. They could be further categorized by resin type (acrylic, alkyd, epoxy, polyurethane, etc.). Then, the HAP content ''as applied'' (*i.e.,* after thinning and mixing of additives) could be determined and the average of the best coatings in each category could represent the MACT floor for that coating category. This approach is similar to the coating category approaches used in the wood furniture manufacturing NESHAP (40 CFR part 63, subpart JJ) and the shipbuilding and ship repair NESHAP (40 CFR part 63, subpart II). However, it is more complex than those since the miscellaneous metal parts and products category comprises a vast array of coatings and is further broken down by resin type.

A serious drawback to the detailed coating category approach was that the analysis depended on high quality survey responses that would allow us to correlate coating type with resin type and HAP content for a multitude of combinations. Unfortunately, the survey

data did not provide the level of information required to enable us to perform a meaningful analysis of the coating categories.

As an alternative to the detailed coating category approach, we attempted an analysis of each facility based on emissions reported from the various coating operations. In many cases, respondents reported HAP emissions for individual coating lines and other emission points as requested. In many others, however, such estimates were not provided. In those cases, we used available survey information on materials used to derive emission estimates for the various emission points at the facility. The combined reported and derived emission estimates were used in conjunction with material data reported to develop a facilitywide ratio of HAP emitted per volume of solids used. This ''one number'' approach accounted for all coating-related emissions (painting, mixing, thinning, cleaning, etc.) and eliminated the need to separately account for thinning and cleaning solvents, paint additives, etc.

Although the ''one number'' approach is relatively simple, allows flexibility, and accounts for emissions from all operations within the boundaries of the coating operation, we questioned the appropriateness of using a combination of bases to estimate emissions. To check for potential problems, we examined the emissions and materials data reported for several facilities. In many cases, the emissions reported could not be reconciled with the HAP content of the materials used. In some cases, the emissions were reported to be greater than the total HAP content of all materials reported. To avoid basing the MACT floor and eventual rules on questionable, unreconcilable data, we decided to abandon the ''emissions'' approach and rely solely on the reported HAP content of materials to determine the overall ''one number'' ratio of pounds HAP to gallons (gal) solids.

Using material formulation data reported in the survey, the volatile HAP content and the solids content were both summed across all materials, and a ratio of pounds (lb) HAP used per gal solids used was calculated for each facility. This number was modified to reflect any reductions from add-on controls or from waste materials collected and shipped offsite. Solvents recycled onsite were not subtracted, since they would be reused within the boundaries of the coating operation and would not affect the material balance. Recycled materials coming into the operation from offsite were counted the same as new materials purchased.

Once the overall HAP-to-solids ratio was determined for each facility, the facilities were ranked in ascending order based on this ratio (*i.e.,* ranked best performing to worst performing). The top 12 percent of these facilities were identified and their average ratio represented the MACT floor for the entire source category. A similar procedure was performed on the facilities in 16 individual industry segments to determine the effect certain segments may have on the floor calculation and to qualitatively assess how individual segments may be affected by rules based on the floor. The floor calculation based on all facilities (*i.e.,* no segmentation) yielded an average ratio of less than 0.1 lb HAP per gal of coating solids. The floor calculations for individual segments yielded averages ranging from zero lb HAP/gal solids (auto parts, structural steel) to very high averages of 13 lb HAP/gal solids (magnet wire) and 58 lb HAP/gal solids (rubber-to-metal products). This variation from segment to segment indicated that a single floor, with no subcategorization, would not be representative of all sources in the source category. A tentative decision was made to divide the source category into at least three subcategories (magnet wire, rubber-to-metal, and all other facilities grouped into a ''general use'' subcategory) and possibly more depending on the level of homogeneity that could be achieved within each subcategory. In order for the MACT floor to be calculated based on similar sources within a subcategory, the makeup of the subcategory must be homogeneous in terms of processes, application methods, coating types, and applicable HAP control technologies. Too much diversity (with respect to products coated, coating performance requirements, *etc.*) within a subcategory could result in an inappropriate MACT floor since the top-performing facilities (and the specific products they coat) may not be representative of the subcategory. After careful review of the survey results from individual facilities and consultation with several stakeholder groups, we concluded that the diversity within the various industry segments of the general use subcategories remained extremely broad. We concluded that some other means of disaggregating the miscellaneous metal parts and products general use subcategory was needed.

Because of this lack of homogeneity, we attempted to regroup the products coated within the general use subcategory into a different set of potential subcategories. For example, instead of ''automobile parts,'' ''large trucks and buses,'' ''recreational vehicles,'' ''heavy equipment,'' and ''rail transportation,'' the products within these industry segments were regrouped as ''vehicle finishing,'' ''vehicle body parts,'' ''vehicle mechanical parts,'' ''engines and engine parts,'' and ''electrical parts'' in order to group more homogeneous products and performance requirements within the subcategory. After further analysis of the data and discussions with stakeholders associated with these existing segments and potential subcategories, we concluded that the top performing facilities within the newly regrouped potential subcategories were still unrepresentative.

We concluded at this point that the most frequently used approaches to determining a MACT floor for a source category were unlikely to be applicable to the miscellaneous metal parts and products general use subcategory. An innovative approach was needed to provide reasonable HAP emission reductions while maintaining a realistic expectation that the control measures imposed could, in fact, be achievable across this diverse collection of industries. Instead of determining the MACT floor directly from facility emissions or materials information, we decided to use a combination of State VOC limits and locations of specific miscellaneous metal parts and products facilities to establish the MACT floor using the VOC limits as a surrogate for HAP.

The miscellaneous metal parts and products database contains 321 facilities (332 facilities with usable materials information, minus the 11 magnet wire and rubber-to-metal facilities) that are major sources or synthetic minor sources. Using information from the survey, we identified the State in which each facility is located. A review of existing State and local VOC requirements showed that the most stringent limits are those imposed by the various air quality management districts in California. For most coating types, this limit is 2.80 lb VOC per gal of coating (as applied), less water and exempt (non-VOC) solvents. The State of Louisiana imposes a VOC limit of 3.00 lb VOC/gal coating as applied, less water and exempt solvents. The remainder of the States require the 3.50 lb VOC/gal coating limit presented in the Federal control techniques guidelines (CTG) document (Massachusetts and North Carolina express their limits as 6.70 lb VOC/gal solids, which is equivalent to 3.50 lb VOC/gal coating, less water and exempt solvents). The limits discussed here

apply to most coating types (general use coatings). Certain specialty coatings are subject to different VOC limits under the California rules and will be addressed in later paragraphs.

Knowing the State VOC limits and the locations of the miscellaneous metal parts and products facilities in the database, we were able to determine what the average State VOC limit would be for the top 12 percent of the industry. From a total of 321 facilities, 39 facilities comprised the top 12 percent as follows: California—9 facilities @ 2.80 lb VOC/gal; Louisiana—no facilities @ 3.00 lb VOC/gal; and other States—30 facilities @ 3.50 lb VOC/gal. Using these limits and the facilities subject to them, the average State limit for the top 12 percent was calculated to be 3.30 lb VOC/gal coating, less water and exempt solvents, or 6.00 lb VOC/gal solids. Similarly, the best controlled similar sources would be those subject to the California limit of 2.80 lb VOC/gal coating, or 4.50 lb VOC/gal solids.

In order to use the average VOC limit as a surrogate for HAP emissions, we developed a correction factor that relates VOC emissions to HAP emissions within the miscellaneous metal parts and products category. To develop this factor, we calculated the average HAP-to-VOC ratio for all material usage reported by the facilities in the miscellaneous metal parts and products database. By dividing the total amount of HAP reported by the total amount of VOC reported across the miscellaneous metal parts and products category (except for magnet wire and rubber-to-metal products), we determined that the average HAP-to-VOC ratio of materials used is 43 percent.

Using this approach, the MACT floor for existing sources was determined by multiplying the average of the top 12 percent (6.00 lb VOC/gal solids) by the correction factor (43 lb HAP/100 lb VOC). This results in an existing source MACT floor of 2.60 lb HAP/gal solids. A similar calculation using the California limit results in a new source MACT floor of 1.90 lb HAP/gal solids. As mentioned earlier, these floor determinations apply to most coatings (those now referred to as ''general use'' coatings) used within the miscellaneous metal parts and products category. General use coatings are any coatings that do not meet the definitions of the specialty coating categories that are addressed in the following paragraphs.

For most industries within the general use subcategory, the coating type used will be defined as ''general use coatings'' and will be represented by the MACT floor values described above. Certain specialty coatings that are used by some facilities within the general use subcategory have been identified as ''high performance coatings.'' These coatings are not used in any one industry exclusively, but may be used in varying amounts in many different industries. This coating type includes coatings used in severe conditions such as high temperatures or exposure to a variety of harsh chemicals. Certain architectural coatings are also included in this coating type. The proposed rule contains specific definitions that must be met for coatings to be considered high performance coatings. The new and existing source MACT floor for these types of coatings was developed from California's 6.20 lbs VOC/gal of coating provisions for specialty coatings. This limit was used for both the new and existing source MACT floors because it is the most stringent limit found specifically for these coating types, and because it is currently applicable to facilities in California. The HAP-to-VOC ratio of these coatings, based on information received from industry, is on average about 70 percent. The MACT floor for these coatings is, therefore, 27.54 lbs HAP/gal coating solids (3.30 kg HAP/liter coating solids).

The rubber-to-metal products industry segment is considered as a separate subcategory because acceptable low HAP coatings have not been demonstrated for many applications within this industry. Because there are less than 30 facilities within this subcategory, the MACT floor was based on data from the five best performing facilities for which we have data. An analysis of the HAP data provided by the industry in the survey responses lead to the development of a new source floor of 6.80 lbs HAP/gal coating solids (0.82 kg HAP/liter coating solids) and an existing source floor of 37.70 lbs HAP/gal coating solids (4.50 kg HAP/liter coating solids).

Magnet wire coating is also considered as a separate subcategory for which specific MACT floor values were determined. The magnet wire industry is unique within the source category because of the design of the curing ovens used in the industry. These ovens are designed to utilize volatile organics in the exhaust gas stream as a supplemental fuel. They typically operate at temperatures that achieve high volatile organic destruction efficiencies. Based on the HAP data provided by the best performing five of the seven facilities for which we have data (there are less than 30 facilities in the subcategory), the new source MACT floor is 0.44 lbs HAP/gal coating solids (0.05 kg HAP/liter coating solids). The MACT floor for existing facilities is 1.00 lb HAP/gal coating solids (0.12 kg HAP/liter coating solids). These values include a factor of 0.27 lb HAP/gal coating solids (0.03 kg HAP/liter coating solids) to account for emissions from cleaning operations. This factor was necessary because the emissions from most cleaning operations that employ solvents containing HAP are not captured and controlled by the ovens.

After the floors have been determined for new and existing sources in a source category or subcategory, we must set emission standards that are technically achievable and no less stringent than the floors. Such standards must then be met by all sources within the category or subcategory. We identify and consider any reasonable regulatory alternatives that are ''beyond-the-floor,'' taking into account emissions reductions, cost, non-air quality health and environmental impacts, and energy requirements. These alternatives may be different for new and existing sources because of different MACT floors, and separate standards may be established for new and existing sources.

We identified three regulatory alternatives more stringent than the MACT floor level of control for organic HAP. These alternatives are the use of powder coatings as an alternative to HAP-containing liquid coatings; the use of liquid coatings that have a very low, or no, organic HAP content as an alternative to higher HAP content liquid coatings; and use of add-on capture systems and control devices.

Information indicates that several miscellaneous metal parts and products surface coating facilities have converted to using only powder coatings. Such facilities typically produce a single type of product (such as lawn and garden equipment), do not require unusual finishes, and use a small number of colors. Many miscellaneous metal parts and products surface coating facilities, however, manufacture more than one product and often use a wide array of colors. Although powder coatings may be somewhat more durable than conventional liquid coatings, specialty finishes such as antique and crackle, as well as the palette of designer colors offered by some manufacturers, may not be adequately duplicated by powder coatings. Consequently, while powder coating is a proven technology that can be used in many situations, it is not universally applicable in the miscellaneous metal parts and products industry and was, therefore, rejected as a beyond-the-floor option for existing or new sources.

Lower organic HAP liquid coatings fall into two primary categories. The

most common category is coatings formulated with solvents that are not organic HAP (but may be VOC). The second category is those coatings that result from alternate technologies such as ultraviolet (UV)-curable coatings and electron beam (EB)-curable coatings. These coatings do not employ organic HAP or VOC to keep the pigment and other components of the coating in solution until curing. Therefore, organic HAP emissions are very small.

These lower organic HAP coatings are currently in production use in some industries, but their applicability in many other industries is limited. Given the limited applicability of UV-curable and EB-curable coatings, we do not believe it is feasible to require the use of these coatings and rejected them as a beyond-the-floor option for existing or new sources.

It is technically feasible to reduce emissions from affected sources by at least 95 percent through the use of capture systems and add-on control devices. However, the estimated cost of a permanent total enclosure and a control device, such as an oxidizer, for facilities in this source category could be as much as $1 million.

Without having information on the benefits that would be achieved by further reducing emissions beyond-the-floor, we determined that the additional emissions reductions that could be achieved do not warrant the costs that each existing and new source could incur by using add-on controls. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time. After implementation of these standards, we will evaluate the health and environmental risks that may be posed as a result of exposure to emissions from the miscellaneous metal parts and products surface coating source category. At that time, we will determine whether the additional costs are warranted, in light of the available risk information.

For existing sources, we based the proposed standards on the existing source MACT floor. As described earlier, we determined that beyond-the-floor options were either not technically feasible or economically justified for all existing sources. For the same reasons, we based the proposed standards for new sources on the new source MACT floor.

The MACT levels of control for new and existing sources can be achieved in several different ways. Many sources would be able to use lower-HAP coatings, although they may not be available to meet the needs of every source. If a source is also using cleaning materials that contain organic HAP, then it may be able to switch to lower-HAP or non-HAP cleaning materials, which are widely available, to reduce the sourcewide organic HAP emissions rate to the MACT level. Other available options are the use of powder coatings or capture systems and add-on control devices to reduce emissions.

We note here that our assumption that 100 percent of the organic HAP in the materials used are emitted by the affected source would not apply when the source sends waste organic HAP-containing materials to a facility for treatment or disposal. We made that assumption because the industry survey responses provided little information as to the amount of organic HAP recovered and recycled or treated and disposed. We, therefore, concluded that this practice may not be common within the industry. We recognize, however, that some facilities may conduct such activities and should be allowed to account for such activities in determining their emissions. Thus, the proposed rule allows you to reduce the organic HAP emissions by the amount of any organic HAP contained in waste treated or disposed at a hazardous waste treatment, storage, and disposal facility that is regulated under 40 CFR part 262, 264, 265, or 266.

Because it is expected that some facilities in the general use subcategory may use both general use and high performance coating types, an equation was developed in the proposed NESHAP that allows a facility-specific emission limit to be calculated based on the relative amounts of each of the coating types used. The emission limit for each facility is a weighted average calculated using the MACT limit and the percentage of solids for each coating type. For example, if an existing facility applies 10,000 gal of solids of general use coatings and 5,000 gal of solids of high performance coatings, the facility's emission limit would be calculated as follows:

Limit =

$$\frac{(2.60)*(10{,}000)+(27.54)*(5{,}000)}{(10{,}000)+(5{,}000)} = 10.9 \text{ lbs HAP/gal solids.}$$

For facilities that use only general use or only high performance coatings, the MACT floor emission limit for the entire affected facility is the value specified for that coating type.

E. How Did We Select the Format of the Proposed Standards?

Numerical emission standards are required by section 112(h) of the CAA unless we can justify that it is not feasible to prescribe or enforce an emission standard, in which case a design, equipment, work practice, or operational standard can be set.

We selected the format of the standards to be mass of organic HAP per volume of coating solids. The performance-based nature of this proposed format would allow the owners and operators of miscellaneous metal parts and products coating operations flexibility in choosing any combination of means to comply with the emission limits. Options for complying with the standards include coating reformulation, use of lower-HAP or non-HAP materials, solvent elimination, work practices, and add-on control devices.

We selected volume of coating solids as a component of the proposed standards to normalize the rate of organic HAP emissions across all sizes and types of facilities. We selected the volume of coating solids used because it is directly related to the surface area coated (*i.e.,* the average dry film thickness of coatings on most miscellaneous metal parts and products is generally consistent) and, therefore, provides an equitable basis for all coatings, regardless of differences in coating densities.

Other choices for the format of the proposed standards that we considered, but rejected, included a usage limit (mass per unit time) and a never-to-be-exceeded limit on the organic HAP content of coatings, solvents, or cleaning materials. As it is not our intent to limit a facility's production under the proposed standards, we rejected a usage limit. We also rejected a never-to-be-exceeded limit as the proposed standards allow averaging of HAP emissions from the materials used during the compliance period.

F. How Did We Select the Testing and Initial Compliance Requirements?

The proposed standards would allow you to choose among several methods to demonstrate compliance with the

proposed standards for organic HAP: Coatings with low- or no-organic-HAP; an overall organic HAP emission rate from all coatings, thinners, and cleaning materials that is less than the applicable emission limit; or capture systems and control devices.

Coatings With Low- or No-Organic-HAP

You would be required to document the organic HAP content of all coatings and show that each is less than the applicable emission limit. You would also have to show that each thinner and each cleaning material used contains no organic HAP. Method 311 of 40 CFR part 63, appendix A, is the method developed by EPA for determining the mass fraction of organic HAP in coatings and has been used in previous surface coating NESHAP. We have not identified any other methods that provide advantages over Method 311 for use in the proposed standards.

Method 24 of 40 CFR part 60, appendix A, is the method developed by EPA for determining the mass fraction of volatile matter for coatings and can be used if you choose to determine the nonaqueous volatile matter content as a surrogate for organic HAP. In past standards, VOC emission control measures have been implemented in coating industries with Method 24 as the compliance method. We have not identified any other methods that provide advantages over Method 24 for use in the proposed standards.

The proposed requirements for determining volume fraction of coating solids would allow you to choose between obtaining the information for each coating from the supplier (or manufacturer) or measuring the volume with either ASTM Method D2697–86 (1998) or ASTM Method D6093–97.

Overall Organic HAP Emission Rate

To demonstrate initial compliance using this option, you would calculate the organic HAP emission rate for one or more coating operations in the affected source based on the mass of organic HAP in all coatings, thinners, and cleaners and the volume of coating solids used during the compliance period and demonstrate that it does not exceed the applicable emission limit. You would determine these values using the methods discussed previously.

Capture Systems and Control Devices

If you use a capture system and control device other than a solvent recovery device for which you conduct a liquid-liquid material balance, you would be required to conduct an initial performance test of the system to determine its overall control efficiency. For a solvent recovery system for which you conduct a liquid-liquid material balance, you would determine the quantity of volatile matter applied and the quantity recovered during the initial compliance period to determine its overall control efficiency. For both cases, the overall control efficiency would be combined with the mass of organic HAP in the coatings and other materials used to calculate the compliance period HAP emission rate in kilograms (kg) HAP/liter of coating solids. If you conduct a performance test, you would also determine parameter operating limits during the test. The test methods that the proposed standards would require for the performance test have been required under many standards of performance for industrial surface coating sources under 40 CFR part 60 and NESHAP under 40 CFR part 63. We have not identified any other methods that provide advantages over these methods.

G. How Did We Select the Continuous Compliance Requirements?

To ensure continuous compliance with the proposed organic HAP emission limits and/or operating limits, the proposed standards would require continuous parameter monitoring of capture systems and control devices and recordkeeping. We selected the following requirements based on reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limits and/or operating limits.

We are proposing that certain parameters be continuously monitored for the types of capture systems and control devices commonly used in the industry. These monitoring parameters have been used in other standards for similar industries. The values of these parameters that correspond to compliance with the proposed emission limits are established during the initial or most recent performance test that demonstrates compliance. These values are your operating limits for the capture system and control device.

You would be required to determine 3-hour average values for most monitored parameters for the affected source. We selected this averaging period to reflect operating conditions during the performance test to ensure the control system is continuously operating at the same or better control level as during a performance test demonstrating compliance with the emission limits.

To demonstrate continuous compliance with the applicable emission limitations, you would also need records of the quantity of coatings and other materials used and the data and calculations supporting your determination of their organic HAP content. If you conduct liquid-liquid material balances, you would need records of the quantity of volatile matter used and the quantity recovered by the solvent recovery system during each compliance period.

H. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 2 of the proposed subpart MMMM. We evaluated the General Provisions requirements and included those we determined to be the minimum notification, recordkeeping, and reporting necessary to ensure compliance with, and effective enforcement of, the proposed standards.

I. How Did We Select the Compliance Date?

You would be allowed 3 years to comply with the final standards for existing affected sources. This is the maximum period allowed by the CAA. We believe that 3 years for compliance is necessary to allow adequate time to accommodate the variety of compliance methods that existing sources may use. Most sources in this category would need this 3-year maximum amount of time to develop and test reformulated coatings, particularly those that may opt to comply using a different lower-emitting coating technology. We want to encourage the use of these pollution prevention technologies. In addition, time would be needed to establish records management systems required for enforcement purposes. Some sources may need the time to purchase and install emission capture and control systems. In such cases, you would need to obtain a permit for the use of add-on controls, which will require time for approval from the permitting authority.

The CAA requires that new or reconstructed affected sources comply with standards immediately upon startup or the effective date of the final rule, whichever is later.

IV. Summary of Environmental, Energy, and Economic Impacts

Model plants were developed to aid in the estimation of the impacts the proposed standards would have on miscellaneous metal parts and products surface coating operations. Five model plants distinguished by size, as

measured by the total volume of coating solids used, were developed. Impacts were then developed for each model plant, and these individual impacts were scaled to nationwide levels based on the number of facilities corresponding to each model plant size. We used the model plant approach because we did not have adequate data to estimate impacts for each actual facility.

A variety of compliance methods are available to the industry to meet the proposed emission limits. We analyzed the information obtained from the industry survey responses, industry site visits, trade groups, and industry representatives to determine which compliance methods would most likely be used by existing and new sources. We expect that the most widely-used method for existing sources would be low-HAP content liquid coatings (coatings with HAP contents at or below the emission limits). Powder coatings, no-HAP cleaning materials, and add-on capture and control systems would likely be used by existing sources, but to a lesser extent. Various combinations of these methods may be used. New sources are expected to use a combination of powder coatings, low-HAP coatings, and no-HAP cleaning materials.

For the purpose of assessing impacts, we assumed that all existing sources would convert to liquid coatings and thinners with lower-HAP content than presently used and no-HAP cleaning materials. We assumed that new sources would use either powder coatings or lower-HAP coatings and no-HAP cleaning materials.

We first estimated the impacts of the proposed emission limits on the five model plants. To scale up the model plant impacts to nationwide levels, we multiplied the individual model plant impacts by the estimated number of major sources in the United States corresponding to each plant size. We estimated that there are 1,500 existing major source facilities nationwide, and that an additional 45 new facilities would become affected sources each year.

A. What Are the Air Impacts?

For existing major sources, we estimated that compliance with the proposed emission limits would result in reductions of nationwide organic HAP emissions of 25,822 tpy. This represents a reduction of about 48 percent from the baseline organic HAP emissions of 53,869 tpy.

For the purpose of estimating the impacts of the proposed standards on new sources, we estimated the percentage of new facilities that would, in the absence of the standards, emit HAP at levels that would exceed the proposed standards. For new sources, we believe that many will use coating technologies that are considered to be ''state-of-the-art'' coatings (*e.g.,* powder coatings and low-HAP liquid coatings). However, we assumed for the impacts estimation that the same percentage of both new and existing facilities would be noncomplying at baseline conditions. The baseline emission rate for these noncomplying facilities was assumed to be the same as that determined for the existing source model plants. Using these assumptions, we have estimated the nationwide HAP reductions resulting from new facilities complying with the proposed standards would be about 803 tpy from the 45 new sources that would become subject to the rule each year.

B. What Are the Cost Impacts?

We have estimated the costs related to complying with the emission limitations and meeting the monitoring, recordkeeping, and reporting requirements. The costs to comply with the emission limitations include the increased cost of reformulated low-HAP coating materials, as well as any capital expenditures that would be required to facilitate the use of these materials. Alternatively, facilities could choose to purchase, install, and operate capture systems and add-on control devices. We have assumed for this analysis that all affected facilities will comply through the use of reformulated coatings, thinners, and cleaning materials, and that these materials can be utilized without the need for capital expenditures. Annual costs for meeting the monitoring, recordkeeping, and reporting requirements of the proposed rule have also been included.

Existing Sources

To comply with the proposed standards, existing facilities will likely use reformulated coatings, thinners, and cleaning materials. Compliance costs were estimated to be the incremental cost difference between the materials currently used and the complying materials. Estimates of cost impacts were based on five model plants that were developed to represent the range of sizes and coating materials found throughout the industry. Each model plant was assumed to comply with the proposed standards by switching to non-HAP adhesives, surface preparation materials and cleaning materials and reducing the HAP content of the coatings and thinners. The annual incremental cost of the reformulated raw materials ranged from approximately $2,635 for model plant 1, representing the segment of industry with the lowest coating solids usage, to $114,540 for model plant 5, representing the segment of industry that uses over 75,000 gal of coating solids. The nationwide cost impact was estimated for each industry segment by multiplying the annual costs for each model plant by the number of facilities represented by that model plant. A total nationwide cost impact associated with material usage was estimated by summing the nationwide costs for each of the five industry segments. In addition, we included estimates for monitoring, recordkeeping, and reporting costs for all 1,500 existing affected sources.

We estimate total nationwide annual costs in the fifth year to comply with the proposed emission limits to be $47.5 million for existing sources. These costs include approximately $8.9 million for direct costs associated with material usage and $38.6 million for recordkeeping and reporting.

New Sources

We estimate the number of new major sources to be 45 per year, based on an average growth rate of 3 percent per year. Applying the same assumptions for estimating costs that were used for existing sources results in an estimate of the fifth year costs for new sources of about $9.8 million. Of this total, $3.6 million represents the incremental costs of low-HAP materials, and $6.2 million represents the costs for recordkeeping and reporting.

C. What Are The Economic Impacts?

We performed an economic impact analysis (EIA) to provide an estimate of the impacts on facilities, firms, and markets within this source category. Given the wide diversity of products that will be affected by the proposed standards, EPA relied upon estimated compliance costs and publicly available financial data on affected firms to determine these impacts. In general, we expect the economic impacts of the proposed standards to be minimal, with little or no change in market prices or production. Therefore, no adverse impact will occur for those industries that consume coated metal parts such as building and construction, transportation equipment and vehicle parts, and other industrial and consumer products.

Based on the industry survey responses, EPA was able to identify 176 companies that owned 321 potentially affected facilities within this source category. Of this total, we obtained sales

data for 147 companies and net income data for 76 companies. For those companies with sales data, the EIA indicates that these regulatory costs average less than 0.1 percent of company sales with a range from zero to 1.25 percent. For those companies with net income data, these regulatory costs average 0.2 percent of company net income with a range from zero to 3.6 percent. This analysis indicates that the cost of the proposed standards should not cause producers to cease or significantly alter their current operations. Hence, no firms or facilities are expected to be at risk of closure because of the proposed standards. For more information, consult the docket for this project.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

Based on information from the industry survey responses, we found no indication that the use of low-organic-HAP content coatings, thinners, and cleaning materials at existing sources would result in any increase or decrease in non-air health, environmental, and energy impacts. There would be no change in the utility requirements associated with the use of these materials, so there would be no change in the amount of energy consumed as a result of the material conversion. Also, there would be no significant change in the amount of materials used or the amount of waste produced.

Because new sources are expected to comply with the proposed standards through the use of low-HAP coating technologies rather than add-on control devices, there would be no significant change in energy usage or waste production.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rule is not a ''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Pursuant to the terms of Executive Order 13132, it has been determined that the proposed rule does not have ''federalism implications'' because it does not meet the necessary criteria. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule. Although Section 6 of Executive Order 13132 does not apply to the proposed rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the proposed rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate miscellaneous metal parts and products surface coating facilities. Thus, Executive Order 13175 does not apply to the proposed rule.

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

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the

analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it does not establish environmental standards based on an assessment of health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

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

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the proposed rule for any 1 year has been estimated to be about $57.5 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of Section 203 of the UMRA.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards ranging from 100–1,000 employees or less than $5 million in annual sales; (2) a small governmental jurisdiction that is a government of a city, town, county, 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. It should be noted that companies affected by this proposed rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration size standards (13 CFR part 121).

For purposes of assessing the impacts of today's proposed rule on small entities, EPA conducted an assessment of the proposed standards on small businesses within the miscellaneous metal parts source category. Based on SBA size definitions and reported sales and employment data, EPA's survey identified 29 of the 147 companies owning major source facilities as small businesses. The average (median) total annual compliance cost is projected to be $59,000 ($36,000) per small company. Under the proposed standards, the average (median) annual compliance cost share of sales for small businesses was only 0.25 (0.04) percent with a range of zero to 1.25 percent. After considering the economic impact of today's proposed rule on small entities, EPA certifies that this action will not have a significant economic 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, EPA has nonetheless worked aggressively to minimize the impact of the proposed rule on small entities, consistent with our obligations under the CAA. We solicited input from small entities during the data-gathering phase of the proposed rulemaking. We are proposing compliance options which give small entities flexibility in choosing the most cost-effective and least burdensome alternative for their operation. For example, a facility could purchase and use low-or no-HAP coatings, thinners, and cleaning materials (*i.e.,* pollution prevention) that meet the proposed standards rather than being required to purchase add-on control systems. The low-or no-HAP option can be demonstrated with minimum burden by using already-maintained purchase and usage records. No testing of materials would be required as the facility owner could show that their coatings meet the emission limits by providing formulation data supplied by the manufacturer.

We are also proposing one option that allows compliance demonstrations to be conducted on a rolling 12-month basis, meaning that the facility would each month calculate a 12-month organic HAP emission rate for the previous 12 months to determine compliance. This will give affected small entities extra flexibility in complying with the emission limits since small entities are more likely to use lower monthly volumes and/or a limited number of materials.

Furthermore, we are proposing the minimum monitoring, recordkeeping,

and reporting requirements needed for enforcement and compliance assurance.

We continue to be interested in the potential impacts of the proposed standards on small entities and welcome comments on issues related to such impacts. For more information, consult the docket for this rulemaking.

H. Paperwork Reduction Act

The information collection requirements in the proposed rule has been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2056.01) and a copy may be obtained from Sandy Farmer by mail at the Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.*

The information collection requirements are not effective until OMB approves them. The information collection 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 Agency policies set forth in 40 CFR part 2, subpart B.

The proposed standards would require maintaining records of all coatings, thinners, and cleaning materials data and calculations used to determine compliance. This information includes the volume used during each 12-month compliance period, mass fraction of organic HAP, density, and, for coatings only, volume fraction of coating solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected sourcewide emissions for each 12-month compliance period and all data, calculations, test results, and other supporting information used to determine this value.

The monitoring, recordkeeping, and reporting burden in the 5th year after the effective date of the promulgated rule is estimated to be 824,343 labor hours at a cost of $44.76 million for new and existing sources.

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

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

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822), 401 M Street, SW, Room 925H, West Tower, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 13, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by September 12, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in the proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.,* material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA does not use available and applicable VCS.

The proposed rule involves technical standards. The EPA proposes to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A–F, and 311. Consistent with the NTTAA, we conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, and 204A–F. The search and review results have been documented and are available in the docket of the proposed rule.

Two VCS were identified for determining the volume solids content of coatings, and we propose to use them in the rule. The standards are ASTM D2697–86 (1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' and ASTM D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer.'' These standards fill a void in EPA Method 24 which directs that volume solids content be calculated from the coating manufacturer's formulation. The proposed rule does allow for the use of the volume solids content values calculated from the coating manufacturer's formulation; however, test results will take precedence if they do not agree with calculated values.

Six VCS: ASTM D1475–98, ASTM D2369–98, ASTM D3792–99, ASTM D4017–96a, ASTM D4457–85 (Reapproved 1991), and ASTM D5403–93, are already incorporated by reference (IBR) in EPA Method 24. In addition, we are separately specifying the use of ASTM D1475–98 for measuring the density of individual coating components, such as organic solvents.

Five VCS: ASTM D1979–97, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94 are IBR in EPA Method 311.

In addition to the VCS we propose to use in the rule, the search for emissions measurement procedures identified 14 other VCS. We determined that 11 of these 14 standards identified for measuring emissions of the HAP or

surrogate subject to emission standards in the proposed rule were impractical alternatives to EPA test methods for the purposes of the proposed rule. Therefore, the EPA does not intend to adopt these standards. (*See* docket A–97–34 for further information on the methods.)

Three of the 14 VCS identified in this search were not available at the time the review was conducted for the purposes of the proposed rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A. While we are not including these three VCS in today's proposal, EPA will consider the standards when final.

The EPA takes comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable VCS. Commenters should also explain why the proposed rule should adopt these VCS in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Sections 63.3941, 63.3965, 63.3966, and Table 2 to subpart MMMM of the proposed standards list EPA testing methods included in the proposed rule. Under the NESHAP General Provisions, 40 CFR 63.8, subpart A, a source may apply to EPA for permission to use alternative monitoring in place of any EPA testing methods.

List of Subjects in 40 CFR Part 63

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

Dated: June 5, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is amended by adding subpart MMMM to read as follows:

Subpart MMMM—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Miscellaneous Metal Parts and Products

What this Subpart Covers

Sec.

63.3880 What is the purpose of this subpart?
63.3881 Am I subject to this subpart?
63.3882 What parts of my plant does this subpart cover?
63.3883 When do I have to comply with this subpart?

Emission Limitations

63.3890 What emission limits must I meet?
63.3891 What are my options for meeting the emission limits?
63.3892 What operating limits must I meet?
63.3893 What work practice standards must I meet?

General Compliance Requirements

63.3900 What are my general requirements for complying with this subpart?
63.3901 What parts of the General Provisions apply to me?

Notifications, Reports, and Records

63.3910 What notifications must I submit?
63.3920 What reports must I submit?
63.3930 What records must I keep?
63.3931 In what form and for how long must I keep my records?

Compliance Requirements for the Compliant Material Option

63.3940 By what date must I conduct the initial compliance demonstration?
63.3941 How do I demonstrate initial compliance with the emission limitations?
63.3942 How do I demonstrate continuous compliance with the emission limitations?

Compliance Requirements for the Emission Rate Without Add-On Controls Option

63.3950 By what date must I conduct the initial compliance demonstration?
63.3951 How do I demonstrate initial compliance with the emission limitations?
63.3952 How do I demonstrate continuous compliance with the emission limitations?

Compliance Requirements for the Emission Rate With Add-On Controls Option

63.3960 By what date must I conduct performance tests and other initial compliance demonstrations?
63.3961 How do I demonstrate initial compliance?
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What This Subpart Covers

§ 63.3880 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for miscellaneous metal parts and products surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.3881 Am I subject to this subpart?

(a) Except as provided in paragraph (c) of this section, the source category to which this subpart applies is the surface coating of miscellaneous metal parts and products, and it includes the subcategories listed in paragraphs (a)(1) through (3) of this section. Surface coating is the application of coatings to a substrate using, for example, spray guns or dip tanks. Miscellaneous metal parts and products include, but are not limited to, metal components of the following types of products: automotive parts and accessories, bicycles and sporting goods, recreational vehicles, extruded aluminum structural components, railroad cars, heavy duty trucks, medical equipment, lawn and garden equipment, electronic equipment, magnet wire, steel drums, industrial machinery, and numerous

other industrial and consumer products. The source category also includes the surface coating of the plastic contained in parts and products that are pre-assembled from plastic and metal components, where greater than 50 percent of the coatings (by volume, determined on a rolling 12-month basis) are applied to the metal surface, and where the surface coating of the metal surface is subject to this subpart. If your source is subject to this subpart and you can demonstrate that more than 50 percent of your coatings are applied to metal surfaces, then compliance with this subpart constitutes compliance with the NESHAP for plastic parts and products surface coating.[1] You must maintain records (such as coating usage or surface area) to document that more than 50 percent of the coatings are applied to metal surfaces.

(1) The general use subcategory includes all surface coating operations in the miscellaneous metal parts and products source category that are not included in the magnet, wire, or rubber to metal subcategories.

(2) The magnet wire subcategory includes surface coating operations that are performed using coatings that meet the definition of magnet wire coatings in § 63.3981.

(3) The rubber to metal subcategory includes surface coating operations that are performed using coatings that meet the definition of rubber to metal coatings in § 63.3981.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.3882, that uses 946 liters (250 gallons) per year, or more, of coatings in the source category defined in paragraph (a) of this section and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating that meets the criteria of paragraphs (c)(1) through (5) of this section.

(1) Surface coating conducted at a source that uses only coatings, thinners, and cleaning materials that contain no organic HAP, as determined according to § 63.3941(a).

(2) Surface coating subject to any other NESHAP in this part as of [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(3) Surface coating that occurs at research or laboratory facilities, that is part of janitorial, building, and facility maintenance operations, or that occurs at hobby shops operated for noncommercial purposes.

(4) For the purpose of this subpart, the extrusion of a plastic covering onto metal wire or cable is not considered to be a surface coating operation.

(5) The provisions of this subpart do not apply to coatings used in volumes of less than 189 liters (50 gallons) per year, provided that the total volume of coatings exempt under this paragraph (c)(5) does not exceed 946 liters (250 gallons) per year at the facility.

(d) If you own or operate an affected source that is subject to this subpart and at the same affected source you also perform surface coating subject to any other NESHAP in this part, you may choose to be subject to the requirements of the more stringent of the subparts for the entire surface coating facility. If you choose to be subject to the requirements of another subpart and demonstrate that, by doing so, your facilitywide HAP emissions in kilograms (kg) per year (tons per year (tpy)) from surface coating operations will be less than or equal to the emissions achieved by complying separately with all applicable subparts, compliance with the more stringent NESHAP will constitute compliance with this subpart.

§ 63.3882 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source within each of the three subcategories listed in § 63.3881(a).

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of miscellaneous metal parts and products within each subcategory.

(1) All coating operations as defined in § 63.3981;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if you commenced its construction after August 13, 2002, and the construction is of a completely new miscellaneous metal parts and products surface coating facility where previously no miscellaneous metal parts and products surface coating facility had existed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.3883 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.3940, 63.3950, and 63.3960.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section.

(1) If the initial startup of your new or reconstructed affected source is before [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the compliance date is [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(2) If the initial startup of your new or reconstructed affected source occurs after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is the date 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later.

[1] Currently under development.

(d) You must meet the notification requirements in § 63.3910 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.3890 What emission limits must I meet?

(a) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit specified in paragraphs (a)(1) through (4) of this section, determined according to the requirements in § 63.3941, § 63.3951, or § 63.3961.

(1) For a new or reconstructed general use affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the HAP limit specified by Equation 1 of this section during each 12-month compliance period.

$$\text{HAP Limit} = \frac{0.23(GU) + 3.30(HP)}{(GU + HP)} \qquad \text{(Eq. 1)}$$

Where:

HAP limit = total allowable organic HAP that can be emitted to the atmosphere from the miscellaneous metal parts and products surface coating operations, in kg organic HAP per liter of coating solids used during the 12-month compliance period.

0.23 = HAP emission limit for general use coatings, kg HAP/liter coating solids (1.94 pounds (lbs) HAP/gal coating solids).

GU = volume of general use coating solids used during the 12-month compliance period, liters.

3.30 = HAP emission limit for high performance coatings, kg HAP/liter coating solids (27.54 lbs HAP/gal coating solids).

HP = volume of high performance coating solids used during the 12-month compliance period, liters.

(2) If you use only one of the coating types (general use or high performance), then you must limit organic HAP emissions to the atmosphere to no more than the HAP emission limit specified for that coating type in the definition of terms used in Equation 1 of this section.

(3) For each new or reconstructed magnet wire affected source, limit organic HAP emissions to no more than 0.05 kg HAP/liter coating solids (0.44 pound (lb) HAP/gallon (gal) coating solids) used during each 12-month compliance period.

(4) For each new or reconstructed rubber to metal affected source, limit organic HAP emissions to no more than 0.82 kg HAP/liter coating solids (6.80 lb HAP/gal coating solids) used during each 12-month compliance period.

(b) For an existing affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit specified in paragraphs (b)(1) through (4) of this section, determined according to the requirements in § 63.3941, § 63.3951, or § 63.3961.

(1) For each existing general use affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the HAP limit specified by Equation 2 of this section during each 12-month compliance period.

$$\text{HAP Limit} = \frac{0.31(GU) + 3.30(HP)}{(GU + HP)} \qquad \text{(Eq. 2)}$$

Where:

HAP limit = total allowable organic HAP that can be emitted to the atmosphere from the miscellaneous metal parts and products surface coating operations, in kg organic HAP per liter of coating solids used during the 12-month compliance period.

0.31 = HAP emission limit for general use coatings, kg HAP/liter coating solids (2.60 lbs HAP/gal coating solids).

GU = volume of general use coating solids used during the 12-month compliance period, liters.

3.30 = HAP emission limit for high performance coatings, kg HAP/liter coating solids (27.54 lbs HAP/gal coating solids).

HP = volume of high performance coating solids used during the 12-month compliance period, liters.

(2) If you use only one of the coating types, then you must limit organic HAP emissions to the atmosphere to no more than the HAP emission limit specified for that coating type in the definition of terms used in Equation 2 of this section.

(3) For each existing magnet wire affected source, limit organic HAP emissions to no more than 0.12 kg HAP/liter coating solids (1.00 lb HAP/gal coating solids) used during each 12-month compliance period.

(4) For each existing rubber to metal affected source, limit organic HAP emissions to no more than 4.50 kg HAP/liter coating solids (37.70 lbs HAP/gal coating solids) used during each 12-month compliance period.

§ 63.3891 What are my options for meeting the emission limits?

You must include all coatings, thinners, and cleaning materials used in the affected source when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.3890. To make this determination, you must use at least one of the three compliance options listed in paragraphs (a) through (c) of this section. You may apply any of the compliance options to an individual coating operation, or to multiple coating operations as a group, or to the entire affected source. You may use different compliance options for different coating operations, or at different times on the same coating operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document this switch as required by § 63.3930(c), and you must report it in the next semiannual compliance report required in § 63.3920.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.3890, and that each thinner and each cleaning material used contains no organic HAP. You must meet all the

requirements of §§ 63.3940, 63.3941, and 63.3942 to demonstrate compliance with the applicable emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on the coatings, thinners, and cleaning materials used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3890, calculated as a rolling 12-month emission rate and determined on a monthly basis. You must meet all the requirements of §§ 63.3950, 63.3951, and 63.3952 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on the coatings, thinners, and cleaning materials used in the coating operation(s), and the emissions reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.3890, calculated as a rolling 12-month emission rate and determined on a monthly basis. If you choose to use this option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.3892, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j); and that you meet the work practice standards required in § 63.3893. You must meet all the requirements of §§ 63.3960 through 63.3968 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

§ 63.3892 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.3961(j), you must meet the operating limits specified in Table 1 to this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.3967. You must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 1 to this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.3893 What work practice standards must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the controlled coating operation(s) for which you use this option; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency (EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.3900 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.3891(a) and (b), must be in compliance with the applicable emission limit in § 63.3890 at all times.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.3891(c), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.3890 at all times except during periods of startup, shutdown, and malfunction.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.3892 at all times except during periods of startup, shutdown, and malfunction, and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j).

(iii) The coating operation(s) must be in compliance with the work practice standards in § 63.3893 at all times.

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date specified for your affected source in § 63.3883 and the date when the initial emission capture system and add-on control device performance tests have been completed, as specified in § 63.3960. This requirement does not apply to a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j) in lieu of conducting performance tests.

(d) If your affected source uses an emission capture system and add-on control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect

capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.3901 What parts of the General Provisions apply to me?

Table 2 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.3910 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**], whichever is later. For an existing affected source, you must submit the Initial Notification no later than 1 year after [DATE OF PUBLICATION OF FINAL RULE IN THE **FEDERAL REGISTER**].

(c) *Notification of compliance status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.3940, § 63.3950, or § 63.3960 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (10) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.3940, § 63.3950, or § 63.3960 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.3891 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description of and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.3890, include all the calculations you used to determine the kg (lbs) organic HAP emitted per liter (gal) of coating solids used. You do not need to submit information provided by the materials suppliers or manufacturers or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material, or a summary of the results of testing conducted according to § 63.3941(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating, for one thinner, and for one cleaning material.

(ii) Volume fraction of coating solids for one coating.

(iii) Density for one coating, one thinner, and one cleaning material, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.3951.

(8) The calculation of kg (lb) organic HAP emitted per liter (gal) coating solids used for the compliance option(s) you used, as specified in paragraphs (c)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example calculation of the organic HAP content for one coating, using Equation 1 of § 63.3941.

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month; the calculation of the total volume of coating solids used each month; and the calculation of the 12-month organic HAP emission rate, using Equations 1 and 1A through 1C, 2, and 3, respectively, of § 63.3951.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.3951; the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3951; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3961 and Equations 2, 3, and 3A through 3C of § 63.3961 as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3961; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3961.

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section, except that the requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.3893.

(10) If you have chosen to comply with this subpart by being subject to the requirements of another subpart, your Notification of Compliance Status report for this subpart must include a statement certifying your intent, as well as documentation (and supporting materials) that doing so will result in an overall HAP emission level in kg per year (tpy) equal to or less than the emission level that would result from complying separately with each applicable subpart.

§ 63.3920 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual

compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.3940, § 63.3950, or § 63.3960 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section, and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in § 63.3891 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(v) If you used the emission rate without add-on controls or the emission rate with add-on controls compliance option (§ 63.3891(b) or (c)), the calculation results for each rolling 12-month organic HAP emission rate during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations in §§ 63.3890, 63.3892, and 63.3893 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period.

(5) *Deviations: compliant material option.* If you used the compliant material option, and there was a deviation from the applicable emission limits in § 63.3890, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating used that deviated from the emission limit, and of each thinner and cleaning material used that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content, using Equation 1 of § 63.3941 for each coating identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation, for example, information provided by coating suppliers or manufacturers, or test reports.

(iii) The determination of mass fraction of organic HAP for each coating, thinner, and cleaning material identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation, for example, information provided by material suppliers or manufacturers, or test reports.

(iv) A statement of the cause of each deviation.

(6) *Deviations: emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.3890, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3890.

(ii) The calculations used to determine the 12-month organic HAP emission rate for the compliance period in which the deviation occurred. You must submit the calculations for Equations 1, 1A through 1C, 2, and 3 in § 63.3951; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4). You do not need to submit background data supporting these calculations, for example, information provided by materials suppliers or manufacturers, or test reports.

(iii) A statement of the cause of each deviation.

(7) *Deviations: emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from

an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.3890.

(ii) The calculations used to determine the 12-month organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.3951 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3951; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3961 and Equations 2, 3, and 3A through 3C of § 63.3961 as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3961; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.3961. You do not need to submit the background data supporting these calculations, for example information provided by materials suppliers or manufacturers, or test reports.

(iii) The date and time that each malfunction started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration of each deviation from an operating limit in Table 1 to this subpart and each bypass of the add-on control device during the semiannual reporting period, and the total duration as a percent of the total source operating time during that semiannual reporting period.

(x) A breakdown of the total duration of the deviations from the operating limits in Table 1 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use the emission rate with add-on controls option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, malfunction reports.* If you used the emission rate with add-on controls option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your startup, shutdown, and malfunction plan, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.3930 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP and density for each coating, thinner, and cleaning material and the volume fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraphs (c)(1) through (4) of this section.

(1) A record of the coating operations at which you used each compliance option and the time periods (beginning and ending dates and times) you used each option.

(2) For the compliant material option, a record of the calculation of the organic HAP content for each coating, using Equation 1 of § 63.3941.

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1, 1A through 1C, and 2 of § 63.3951 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3951; and the

calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.3951.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (v) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.3951 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.3951(e)(4).

(ii) The calculation of the total volume of coating solids used each month, using Equation 2 of § 63.3951.

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.3961 and Equations 2, 3, and 3A through 3C of § 63.3961 for as applicable.

(iv) The calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.3961.

(v) The calculation of each 12-month organic HAP emission rate, using Equation 5 of § 63.3961.

(d) A record of the name and volume of each coating, thinner, and cleaning material used during each compliance period.

(e) A record of the mass fraction of organic HAP for each coating, thinner, and cleaning material used during each compliance period.

(f) A record of the volume fraction of coating solids for each coating used during each compliance period.

(g) A record of the density for each coating used during each compliance period and, if you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, the density for each thinner and cleaning material used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.3951 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.3951(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.3951; a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility; and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.3951.

(3) The methodology used in accordance with § 63.3951(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 1 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.3965(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.3964 and 63.3965(b) through (e), including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.3965(e), if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.3966.

(i) Records of each add-on control device performance test conducted according to §§ 63.3964 and 63.3966.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.3967 and to document compliance with the operating limits as specified in Table 1 to this subpart.

(8) A record of the work practice plan required by § 63.3893 and documentation that you are implementing the plan on a continuous basis.

§ 63.3931 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review according to § 63.10(b)(1). Where appropriate, the

records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.3940 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.3941. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the calculations according to § 63.3941 and supporting documentation showing that, during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limits in § 63.3890, and that you used no thinners or cleaning materials that contained organic HAP.

§ 63.3941 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the emission rate without add-on controls option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limits in § 63.3890 and must use no thinner or cleaning material that contains organic HAP as determined according to this section. Any coating operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.3892 and 63.3893, respectively. To demonstrate initial compliance with the emission limitations using the compliant material option, you must meet all the requirements of this section for the coating operation or group of coating operations using this option. Use the procedures in this section on each coating, thinner, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration. You do not need to redetermine the HAP content of cleaning materials that have been reclaimed and reused onsite provided these materials in their condition as received were demonstrated to comply with the compliant material option.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (for example, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (for example, 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in these solvent blends listed in Table 3 or 4 to this subpart. If you use the tables, you must use the values in Table 3 for all solvent blends that match Table 3 entries, and you may only use Table 4 if the solvent blends in the materials you use do not match any of the solvent blends in Table 3, and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 3 or 4 to this subpart, the Method 311 results will take precedence.

(b) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liters of coating solids per liter of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material, as specified in paragraphs (b)(1) and (2) of this section. If test results obtained according to paragraph (b)(1) of this section do not agree with the information obtained under paragraph (b)(2) of this section, the test results will take precedence.

(1) *ASTM Method D2697–86 (1998) or D6093–97.* You may use ASTM Method D2697–86 (1998) or D6093–97 to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Information from the supplier or manufacturer of the material.* You may

obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–98 or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–98 test results and the supplier's or manufacturer's information, the test results will take precedence.

(d) *Calculate the organic HAP content of each coating.* Calculate the organic HAP content, kg organic HAP per liter coating solids, of each coating used during the compliance period, using Equation 1 of this section:

$$H_c = \frac{(D_c)(W_c)}{V_s} \qquad \text{(Eq. 1)}$$

Where:

H_c = organic HAP content of the coating, kg organic HAP per liter coating solids.

D_c = density of coating, kg coating per liter coating, determined according to paragraph (c) of this section.

W_c = mass fraction of organic HAP in the coating, kg organic HAP per kg coating, determined according to paragraph (a) of this section.

V_s = volume fraction of coating solids, liter coating solids per liter coating, determined according to paragraph (b) of this section.

(e) *Compliance demonstration.* The calculated organic HAP content for each coating used during the initial compliance period must be less than or equal to the applicable emission limits in § 63.3890; and each thinner and cleaning material used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.3930 and 63.3931. As part of the Notification of Compliance Status required in § 63.3910, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeded the applicable emission limits in § 63.3890, and you used no thinners or cleaning materials that contained organic HAP, determined according to paragraph (a) of this section.

§ 63.3942 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period to demonstrate continuous compliance, you must use no coating for which the organic HAP content determined using Equation 1 of § 63.3941, exceeds the applicable emission limits in § 63.3890, and use no thinner or cleaning material that contains organic HAP, determined according to § 63.3941(a). A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3940 is the end of a compliance period consisting of that month and the preceding 11 months.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating, thinner, or cleaning material that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(5).

(c) As part of each semiannual compliance report required by § 63.3920, you must identify the coating operation(s) for which you used the compliant material option. If there were no deviations from the emission limitations in § 63.3890, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coating for which the organic HAP content exceeded the applicable emission limits in § 63.3890, and you used no thinner or cleaning material that contained organic HAP, determined according to § 63.3941(a).

(d) You must maintain records as specified in §§ 63.3930 and 63.3931.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.3950 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3951. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the calculations according to § 63.3951 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3890.

§ 63.3951 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the compliant material option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation or group of coating operations must meet the applicable emission limit in § 63.3890, but is not required to meet the operating limits or work practice standards in §§ 63.3892 and 63.3893, respectively. You must meet all the requirements of this section to demonstrate initial compliance with the applicable emission limit in § 63.3890. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate with add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed and reused in the coating operation for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during each month according to the requirements in § 63.3941(a).

(b) *Determine the volume fraction of coating solids for each coating.* Determine the volume fraction of coating solids for each coating used during each month according to the requirements in § 63.3941(b).

(c) *Determine the density of each material.* Determine the density of each coating, thinner, and cleaning material used during each month from test results using ASTM Method D1475–98, information from the supplier or

manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other such information sources, the test results will take precedence.

(d) *Determine the volume of each material used.* Determine the volume (liters) of each coating, thinner, and cleaning material used during each month by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings, thinners, and cleaning materials used during each month minus the organic HAP in certain waste materials. Calculate the mass of organic HAP emissions using Equation 1 of this section.

$$H_e = A + B + C - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions during the month, kg.

A = total mass of organic HAP in the coatings used during the month, kg, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinners used during the month, kg, as calculated in Equation 1B of this section.

C = total mass of organic HAP in the cleaning materials used during the month, kg, as calculated in Equation 1C of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, kg, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the kg organic HAP in the coatings used during the month using Equation 1A of this section:

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coatings used during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg coating per liter coating.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = number of different coatings used during the month.

(2) Calculate the kg of organic HAP in the thinners used during the month using Equation 1B of this section:

$$B = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = total mass of organic HAP in the thinners used during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = number of different thinners used during the month.

(3) Calculate the kg organic HAP in the cleaning materials used during the month using Equation 1C of this section:

$$C = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 1C)}$$

Where:

C = total mass of organic HAP in the cleaning materials used during the month, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month, liters.

$D_{s,k}$ = density of cleaning material, k, kg per liter.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg organic HAP per kg material.

p = number of different cleaning materials used during the month.

(4) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 1 of this section, then you must determine it according to paragraphs (e)(4) (i) through (iv) of this section.

(i) You may include in the determination only waste materials that are generated by coating operations for which you use Equation 1 of this section and that will be treated or disposed of by a facility regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(ii) You must determine either the amount of the waste materials sent to a TSDF during the month or the amount collected and stored during the month and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You must document the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.3930(h). To the extent that waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all the coatings used during each month, using Equation 2 of this section.

$$V_{st} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(V_{s,i}\right) \qquad \text{(Eq. 2)}$$

Where:

V_{st} = total volume of coating solids used during the month, liters.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$V_{s,i}$ = volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.3941(b).

m = number of coatings used during the month.

(g) *Calculate the organic HAP emission rate.* Calculate the organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids used, using Equation 3 of this section:

$$H_{yr} = \frac{\sum_{y=1}^{12} H_e}{\sum_{y=1}^{12} V_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{yr} = organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.

H_e = total mass of organic HAP emissions from all materials used during month, y, kg, as calculated by Equation 1 of this section.

V_{st} = total volume of coating solids used during month, y, liters, as calculated by Equation 2 of this section.

y = identifier for months.

(h) *Compliance demonstration.* The organic HAP emission rate for the initial 12-month compliance period must be less than or equal to the applicable emission limit in § 63.3890. You must keep all records as required by §§ 63.3930 and 63.3931. As part of the

Notification of Compliance Status required by § 63.3910, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3890, determined according to this section.

§ 63.3952 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.3951(a) through (g), must be less than or equal to the applicable emission limit in § 63.3890. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3950 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.3951(a) through (g) on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3890, this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(6).

(c) As part of each semiannual compliance report required by § 63.3920, you must identify the coating operation(s) for which you used the emission rate without add-on controls option. If there were no deviations from the emission limitations, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3890, determined according to § 63.3951(a) through (g).

(d) You must maintain records as specified in §§ 63.3930 and 63.3931.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.3960 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3883. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), you must conduct a performance test of each capture system and add-on control device according to §§ 63.3964, 63.3965, and 63.3966 and establish the operating limits required by § 63.3892 no later than 180 days after the applicable compliance date specified in § 63.3883. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.3883.

(2) You must develop and begin implementing the work practice plan required by § 63.3893 no later than the compliance date specified in § 63.3883.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3961. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.3964, 63.3965, and 63.3966; results of liquid-liquid material balances conducted according to § 63.3961(j); calculations according to § 63.3961 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3890; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3968; and documentation of whether you developed and implemented the work practice plan required by § 63.3893.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.3892 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. The requirements in this paragraph do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.3961(j).

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.3883. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.3961(j), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.3964, 63.3965, and 63.3966 and establish the operating limits required by § 63.3892 no later than the compliance date specified in § 63.3883. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.3961(j), you must initiate the first material balance no later than the compliance date specified in § 63.3883.

(2) You must develop and begin implementing the work practice plan required by § 63.3893 no later than the compliance date specified in § 63.3883.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.3961. The initial compliance period begins on the applicable compliance date specified in § 63.3883 and ends on the last day of the twelfth month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and

add-on control device performance tests conducted according to §§ 63.3964, 63.3965, and 63.3966; results of liquid-liquid material balances conducted according to § 63.3961(j); calculations according to § 63.3961 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.3890; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.3968; and documentation of whether you developed and implemented the work practice plan required by § 63.3893.

§ 63.3961 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option or the emission rate without add-on controls option for any coating operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limitations in §§ 63.3890, 63.3892, and 63.3893. You must meet all the requirements of this section to demonstrate initial compliance with the emission limitations. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate without add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed and reused in the coating operation(s) for which you use the emission rate with add-on controls option.

(b) *Compliance with operating limits.* Except as provided in § 63.3960(a)(4), and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of paragraph (j) of this section, you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.3892, using the procedures specified in §§ 63.3967 and 63.3968.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.3893 during the initial compliance period, as specified in § 63.3930.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (n) of this section to demonstrate compliance with the applicable emission limit in § 63.3890.

(e) *Determine the mass fraction of organic HAP, density, volume used, and volume fraction of coating solids.* Follow the procedures specified in § 63.3951(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating, thinner, and cleaning material used during each month; and the volume fraction of coating solids for each coating used during each month.

(f) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.3951, calculate the total mass of organic HAP emissions before add-on controls from all coatings, thinners, and cleaning materials used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(g) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (h) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (j) of this section to calculate the organic HAP emission reduction.

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balance.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.3963(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction, you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_c = \left(A_C + B_C + C_C - H_{unc}\right)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \qquad \text{(Eq. 1)}$$

Where:

H_C = mass of organic HAP emission reduction for the controlled coating operation during the month, kg.

H_C = total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg, as calculated in Equation 1A of this section.

B_C = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg, as calculated in Equation 1B of this section.

C_C = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg, as calculated in Equation 1C of this section.

H_{unc} = total mass of organic HAP in the coatings, thinners, and cleaning materials used during all deviations specified in § 63.3963(c) and (d) that occurred during the month in

the controlled coating operation, kg, as calculated in Equation 1D of this section.

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.3964 and 63.3965 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.3964 and 63.3966 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, kg, using Equation 1A of this section.

$$A_C = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \quad \text{(Eq. 1A)}$$

Where:

A_C = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the controlled coating operation, kg, using Equation 1B of this section.

$$B_C = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \quad \text{(Eq. 1B)}$$

Where:

B_C = total mass of organic HAP in the thinners used in the controlled coating operation during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(3) Calculate the mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg, using Equation 1C of this section.

$$C_C = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \quad \text{(Eq. 1C)}$$

Where:

C_C = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month, liters.

$D_{s,k}$ = density of cleaning material, k, kg per liter.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg per kg.

p = number of different cleaning materials used.

(4) Calculate the mass of organic HAP in the coatings, thinners, and cleaning materials used in the controlled coating operation during deviations specified in § 63.3963(c) and (d), using Equation 1D of this section.

$$H_{unc} = \sum_{h=1}^{q} \left(Vol_h\right)\left(D_h\right)\left(W_h\right) \quad \text{(Eq. 1D)}$$

Where:

H_{unc} = total mass of organic HAP in the coatings, thinners, and cleaning materials used during all deviations specified in § 63.3963(c) and (d) that occurred during the month in the controlled coating operation, kg.

Vol_h = total volume of coating, thinner, or cleaning material, h, used in the controlled coating operation during deviations, liters.

D_h = density of coating, thinner, or cleaning material, h, kg per liter.

W_h = mass fraction of organic HAP in coating, thinner, or cleaning material, h, kg organic HAP per kg coating.

q = number of different coatings, thinning solvents, or cleaning materials.

(i) [Reserved]

(j) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (j)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (j)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within + 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, kg, based on measurement with the device required in paragraph (j)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(4) Determine the density of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, kg per liter, according to § 63.3951(c).

(5) Measure the volume of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency using Equation 2 of this section.

$$R_V = 100\,\frac{M_{VR}}{\sum_{i=1}^{m} Vol_i D_i MV_{c,i} + \sum_{j=1}^{n} Vol_j D_j WV_{t,j} + \sum_{k=1}^{p} Vol_k D_k WV_{s,k}} \quad \text{(Eq. 2)}$$

Where:

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the month, kg.

Vol_i = volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_i = density of coating, i, kg per liter.

$WV_{c,i}$ = mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating.

Vol_j = volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_j = density of thinner, j, kg per liter.

$WV_{t,j}$ = mass fraction of volatile organic matter for thinner, j, kg volatile organic matter per kg thinner.

Vol_k = volume of cleaning material, k, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_k = density of cleaning material, k, kg per liter.

$WV_{s,k}$ = mass fraction of volatile organic matter for cleaning material, k, kg volatile organic matter per kg cleaning material.

m = number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = number of different thinners used in the coating operation controlled by the solvent recovery system during the month.

p = number of different cleaning materials used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month using Equation 3 of this section.

$$H_{CSR} = \left(A_{CSR} + B_{CSR} + C_{CSR}\right)\left(\frac{R_V}{100}\right) \qquad \text{(Eq. 3)}$$

Where:

H_{CSR} = mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month, kg.

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3A of this section.

B_{CSR} = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3B of this section.

C_{CSR} = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 3C of this section.

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, using Equation 3A of this section.

$$A_{CSR} = \sum_{i=1}^{m}\left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 3A)}$$

Where:

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(ii) Calculate the mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, using Equation 3B of this section.

$$B_{CSR} = \sum_{j=1}^{n}\left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 3B)}$$

Where:

B_{CSR} = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(iii) Calculate the mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, kg, using Equation 3C of this section:

$$C_{CSR} = \sum_{k=1}^{p}\left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 3C)}$$

Where:

C_{CSR} = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{s,k}$ = density of cleaning material, k, kg per liter.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg per kg.

p = number of different cleaning materials used.

(k) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all the coatings used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option, using Equation 2 of § 63.3951.

(l) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions, kg, during each month, using Equation 4 of this section:

$$H_{HAP} = H_e - \sum_{i=1}^{q}\left(H_{C,i}\right) - \sum_{j=1}^{r}\left(H_{CSR,j}\right) \qquad \text{(Eq. 4)}$$

Where:

H_{HAP} = total mass of organic HAP emissions for the month, kg.

H_e = total mass of organic HAP emissions before add-on controls from all the coatings, thinners, and cleaning materials used during the month, kg, determined according to paragraph (f) of this section.

$H_{C,i}$ = total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, kg, from Equation 1 of this section.

$H_{CSR,j}$ = total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, kg, from Equation 3 of this section.

q = number of controlled coating operations not using a liquid-liquid material balance.

r = number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(m) *Calculate the organic HAP emission rate for the 12-month compliance period.* Determine the organic HAP emission rate for the 12-month compliance period, kg of organic HAP per liter coating solids used, using Equation 5 of this section:

$$H_{annual} = \frac{\sum_{y=1}^{12} H_{HAP,y}}{\sum_{y=1}^{12} V_{st,y}} \qquad \text{(Eq. 5)}$$

Where:

H_{annual} = organic HAP emission rate for the 12-month compliance period, kg organic HAP per liter coating solids.

$H_{HAP,y}$ = organic HAP emission rate for month, y, determined according to Equation 4 of this section.

$V_{st,y}$ = total volume of coating solids used during month, y, liters, from Equation 2 of § 63.3951.

y = identifier for months.

(n) *Compliance demonstration.* To demonstrate initial compliance with the emission limit, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit in § 63.3890. You must keep all records as required by §§ 63.3930 and 63.3931. As part of the Notification of Compliance Status required by § 63.3910, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.3890, and you achieved the operating limits required by § 63.3892 and the work practice standards required by § 63.3893.

§ 63.3962 [Reserved]

§ 63.3963 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.3890, the organic HAP emission rate for each compliance period, determined according to the procedures in § 63.3961, must be equal to or less than the applicable emission limit in § 63.3890. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.3960 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.3961 on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.3890, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.3892 that applies to you, as specified in Table 1 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 1 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 1 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.3961(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.3961.

(d) You must meet the requirements for bypass lines in § 63.3968(b) for controlled coating operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7). For the purposes of completing the compliance calculations specified in §§ 63.3961(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the

deviation as indicated in Equation 1 of § 63.3961.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.3893. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.3930(k)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.3910(c)(6) and 63.3920(a)(7).

(f) As part of each semiannual compliance report required in § 63.3920, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.3890, and you achieved the operating limits required by § 63.3892 and the work practice standards required by § 63.3893 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the startup, shutdown, and malfunction plan required by § 63.3900(d).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.3930 and 63.3931.

§ 63.3964 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.3960 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction, and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.3965. You must conduct each performance test of an add-on control device according to the requirements in § 63.3966.

§ 63.3965 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.3960.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings, thinners, and cleaning materials used in the coating operation are applied within the capture system; coating solvent flash-off and coating, curing, and drying occurs within the capture system; and the removal of or evaporation of cleaning materials from the surfaces they are applied to occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or F of appendix M to 40 CFR part 51 to determine the mass fraction, kg TVH per kg material, of TVH liquid input from each coating, thinner, and cleaning material used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings, thinners, and cleaning materials used in the coating operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = mass of liquid TVH in materials used in the coating operation during the capture efficiency test run, kg.

TVH_i = mass fraction of TVH in coating, thinner, or cleaning material, i, that is used in the coating operation during the capture efficiency test run, kg TVH per kg material.

Vol_i = total volume of coating, thinner, or cleaning material, i, used in the coating operation during the capture efficiency test run, liters.

D_i = density of coating, thinner, or cleaning material, i, kg material per liter material.

n = number of different coatings, thinners, and cleaning materials used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section:

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = total mass of TVH liquid input used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or C measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{(TVH_{captured} + TVH_{uncaptured})} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.3966 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.3960. You must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight.

(4) Use Method 4 of appendix A to 40 CFR part 60, to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A if the add-control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(0.0416)\left(10^{-6}\right) \quad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg/per hour (h).

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, parts per million by volume (ppmv), dry basis.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section:

$$DRE = \frac{M_{fi} - M_{fo}}{M_{fi}} \times 100 \quad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.3967 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.3960 and described in §§ 63.3964, 63.3965, and 63.3966, you must establish the operating limits required by § 63.3892 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.3892.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15

minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.,* conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must replace the catalyst bed and conduct a new performance test to determine destruction efficiency according to § 63.3966.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture systems.* For each capture device that is not part of a PTE that meets the criteria of § 63.3965(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 1 to this subpart.

(1) During the capture efficiency determination required by § 63.3960 and described in §§ 63.3964 and 63.3965, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.3968 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor

maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (nondiverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.3920.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section.

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraph (a) and paragraph (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and paragraphs (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraph (a) and paragraphs (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraph (a) and paragraph (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraph (a) and paragraphs (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a

transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks anytime the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraph (a) and paragraphs (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraph (a) and paragraphs (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.3980 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 Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as follows:

(1) Approval of alternatives to the work practice standards in § 63.3893 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.3981 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or capture system efficiency means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings or cleaning materials, both at the point of application and at subsequent points where emissions from the coatings or cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials, such as dirt, grease, oil, and dried or wet coating (*e.g.,* depainting), from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply cleaning materials to a substrate to prepare it for coating application or to remove dried coating from a substrate to prepare for the application of a coating (surface preparation), to apply coating to a substrate (coating application) and to dry or cure the coating after application, or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touchup markers, or marking pens is not a coating operation for the purposes of this subpart.

Coating solids means the nonvolatile portion of the coating that makes up the dry film.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of coating

operation, or capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limit, or operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Facility maintenance means the routine repair or renovation (including the surface coating) of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected facility and that are necessary for the facility to function in its intended capacity.

General use coating means any material that meets the definition of ''coating'' but does not meet the definition of ''high performance coating,'' ''rubber to metal coating,'' or ''magnet wire coating'' as defined in this section.

High performance architectural coating means any coating applied to architectural subsections which is required to meet the specifications of Architectural Aluminum Manufacturer's Association's publication number AAMA 605.2–1980.

High performance coating means any coating that meets the definition of ''high performance architectural coating,'' ''high temperature coating,'' or ''military combat, tactical, and munitions coating'' in this section.

High temperature coating means any coating applied to a substrate which during normal use must withstand temperatures of at least 538 degrees Celcius (1000 degrees Fahrenheit).

Magnet wire coating means any coating applied to wire that will subsequently be used in the fabrication of electrical devices such as motors or generators.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.3941. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg of organic HAP per kg of material.

Military combat, tactical, and munitions coating means coating materials and/or groups of coating materials that singularly or in combination provide military-unique performance and/or battlefield survival capabilities. These coatings include all coating components that have been qualified, or must be compatible with components that are qualified, by the military under a military specification, standard or equivalent as providing military-unique performance and battlefield survival capabilities.

Month means a calendar month or a pre-specified period of 28 days to 35 days, to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per volume of coating solids for a coating calculated using Equation 1 of § 63.3941. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Rubber to metal coating means the coatings that are applied to a metal substrate to provide an adhesive surface necessary for a rubber component to be bonded to the substrate.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all of a substrate. This includes use of a cleaning material to remove dried coating (referred to as paint stripping or depainting) for the purpose of preparing a substrate for application a coating.

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating; liters of coating solids per liter of coating.

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

If you are required to comply with operating limits by § 63.3892, you must comply with the applicable operating limits in the following table:

TABLE 1 TO SUBPART MMMM OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION

For the following device* * *	You must meet the following operating limit * * *	And you must demonstrate continuous compliance with the operating limit * * *
1. thermal oxidizer	a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.3967(a).	i. collecting the combustion temperature combustion data according to § 63.3968(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. catalytic oxidizer	a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.3967(b); and either.	i. collecting the temperature data according to § 63.3968(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.
	b. ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.3967(b)(2); or.	i. collecting the temperature data according to § 63.3968(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature difference at or above the temperature difference limit.
	c. develop and implement an inspection and maintenance plan according to § 63.3967(b)(4).	i. maintaining an up-to-date inspection and maintenance plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.3967(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. carbon adsorber	a. the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.3967(c).	i. measuring the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle according to § 63.3968(d); and ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. the temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to § 63.3967(c).	i. measuring the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle according to § 63.3968(d); and ii. operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. condenser	a. the average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to § 63.3967(d).	i. collecting the condenser outlet (product side) gas temperature according to § 63.3968(e); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. concentrators, including zeolite wheels and rotary carbon adsorbers.	a. the average gas temperature desorption concentrate stream in any 3-hour period must not fall below the limit established according to § 63.3967(e).	i. collecting the temperature data according to 63.3968(f); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature at or above the temperature limit.
	b. the average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to § 63.3967(e).	i. collecting the pressure drop data according to 63.3968(f); and ii. reducing the pressure drop data to 3-hour block averages; and iii. maintaining the 3-hour average pressure drop at or above the pressure drop limit.

TABLE 1 TO SUBPART MMMM OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

For the following device* * *	You must meet the following operating limit * * *	And you must demonstrate continuous compliance with the operating limit * * *
6. emission capture system that is a PTE according to § 63.3965(a).	a. the direction of the air flow at all times must be into the enclosure; and either. b. the average facial velocity of air through all natural draft openings in the enclosure at all at least 200 feet per minute; or. c. the pressure drop across the enclosure must be at least 0.007 inch H2O, as established in Method 204 of appendix M to 40 CFR part 51..	i. collecting the direction of air flow, and either the according to § 63.3968(g)(1) or the according to enclosure; and pressure drop across the according to § 63.3968(g)(2); and ii. maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into enclosure at all times.
7. emission capture system that is not a PTE according to § 63.3965(a).	a. the average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.3967(f).	i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.3968(g); ii. reducing the data to 3-hour block according averages; and iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes	
§ 63.1(b)(1)–(3)	Initial Applicability Determination.	Yes	Applicability to subpart MMMM is also specified in § 63.3881.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart MMMM.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.3981.
§ 63.3(a)–(c)	Units and Abbreviations	Yes	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes	
§ 63.4(b)–(c)	Circumvention/Severability	Yes	
§ 63.5(a)	Construction/Reconstruction	Yes	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements— Applicability.	Yes	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.3883 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources.	Yes	Section 63.3883 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	Yes	Only sources using an add-on control device to comply with the standard must complete startup, shutdown, and malfunction plans.
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standards.

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM—Continued

Citation	Subject	Applicable to subpart MMMM	Explanation
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard.	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart MMMM does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption.	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.3964, 63.3965, and 63.3966.
§ 63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standards. Section 63.3960 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required By the Administrator.	Yes.	
§ 63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in § 63.3968.
§ 63.8(a)(4)	Additional Monitoring Requirements.	No	Subpart MMMM does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes	
§ 63.8(c)(1)–(3)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.3968.
§ 63.8(c)(4)	CMS	No	Section 63.3968 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart MMMM does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.3968 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes	
§ 63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	Section 63.3920 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.3967 and 63.3968 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
63.9(e)	Notification of Performance Test.	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart MMMM does not have opacity or visible emission standards.

TABLE 2 TO SUBPART MMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMM—Continued

Citation	Subject	Applicable to subpart MMMM	Explanation
63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
63.9(h)	Notification of Compliance Status.	Yes	Section 63.3910 specifies the dates for submitting the notification of compliance status.
63.9(i)	Adjustment of Submittal Deadlines.	Yes.	
63.9(j)	Change in Previous Information.	Yes.	
63.10(a)—	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §63.3930 and 63.3931.
63.10(b)(2) (i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for startup, shutdown, malfunction and records only apply to add-on control devices used to comply with the standard.
63.10(b)(2) (vi)–(xi)		Yes.	
63.10(b)(2) (xii)	Records	Yes.	
63.10(b)(2) (xiii)		No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
63.10(b)(2) (xiv)		Yes.	
63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.3920(a)(7).
§ 63.10(c)(9)–(15)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements.	Yes	Additional requirements are specified in § 63.3920.
§ 63.10(d)(2)	Report of Performance Test Results.	Yes	Additional requirements are specified in § 63.3920(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart MMMM does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply with the standard.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart MMMM does not require the use of continuous emissions monitoring systems.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.3920(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart MMMM does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver.	Yes.	
§ 63.11	Control Device Requirements/Flares.	No	Subpart MMMM does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations.	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality.	Yes.	

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 3 TO SUBPART MMMM OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene

TABLE 3 TO SUBPART MMMM OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
3. Hexane	110–54–3	0.5	n-hexane
4. n-Hexane	110–54–3	1.0	n-hexane
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene
6. Aliphatic 140	.....	0	None
7. Aromatic 100	.....	0.02	1% xylene, 1% cumene
8. Aromatic 150	.....	0.09	Naphthalene
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene
10. Aromatic solvent	64742–94–5	0.1	Naphthalene
11. Exempt mineral spirits	8032–32–4	0	None
12. Ligroines (VM & P)	8032–32–4	0	None
13. Lactol spirits	64742–89–6	0.15	Toluene
14. Low aromatic white spirit	64742–82–1	0	None
15. Mineral spirits	64742–88–7	0.01	Xylenes
16. Hydrotreated naphtha	64742–48–9	0	None
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene
18. Stoddard solvent	8052–41–3	0.01	Xylenes
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 4 TO SUBPART MMMM OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

Solvent type	Average organic HAP, mass fraction	Typical organic HAP, percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene
Aromatic [c]	0.06	4% Xylene, 1% Toluene, and 1% Ethylbenzene

[a] Use this table only if the solvent blend does not match any of the solvent blends in table 3 to this subpart and you only know whether the blend is aliphatic or aromatic.

[b] *e.g.,* Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] *e.g.,* Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

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August 13, 2002

Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 39

Indian School Equalization Program; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 39

RIN 1076–AE14

Indian School Equalization Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule with request for comments.

SUMMARY: In order to comply with part B of the Individuals with Disabilities Education Act (IDEA), the Bureau of Indian Affairs is revising the sections of the Indian School Equalization Program (ISEP) Exceptional Child Program regulations concerning placement and funding. The changes will ensure that the funding mechanism under the Indian School Education program (ISEP) does not result in placements that violate the requirement of IDEA that special education students are placed in the least restrictive environment possible and that placements are based upon the needs of students, not the funding formula.

DATES: *Effective Date*: August 19, 2002.

Comment Date: Comments must be received on or before September 12, 2002.

ADDRESSES: If you wish to comment on the interim rule, you may submit your comments to William Mehojah, Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 3512–MIB, Washington, DC 20240. *See* **SUPPLEMENTARY INFORMATION** section for other methods to submit comments.

FOR FURTHER INFORMATION CONTACT: Glenn F. Allison, Office of Indian Education Programs, Bureau of Indian Affairs, 202–208–3628 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Education—Office of Special Education Programs (Education) has found us to be out of compliance with certain requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.* Specifically, Education determined that special education students are not being served in the least restrictive environment in part because of our funding formula under the Indian School Equalization Program (ISEP). This funding formula resulted in placements that violated the requirement that, to the maximum extent appropriate, children with disabilities be placed in the least restrictive environment for educational services based upon their individual needs. In accordance with section 612(a)(5)(B) of IDEA, the Secretary of the Interior and the Office of Indian Education Programs assured the Department of Education that the curent regulations regarding the funding mechanism would be revised as soon as possible to ensure that the regulations do not result in pavements that violate the least restrictive environment requirements of IDEA.

What Regulations Will Be Changed

In order to comply with IDEA and maintain the Bureau of Indian Affairs's eligibility for IDEA funding, we are making the following changes:

1. Eliminating the definitions of high and moderate service levels in 25 CFR 39.11(i)(16) and 25 CFR 39.11(i)(17);

2. Changing the weighted student unit factors under 25 CFR 39.12 and eliminating the Exceptional Child Residential Program weights under 25 CFR 39.13; and

3. Eliminating the eligibility restrictions for the Exceptional Child Residential Programs and the Intensive Residential Guidance Program under 25 CFR 39.11(h)(1)(v).

We are also changing the weighted unit for the Gifted and Talented Program to conform with Public Law 100–297, which states that a gifted and talented student generates two weighted units. Because we changed the basic instructional program weight by grade level, the gifted and talented weighted unit had to be changed to conform with Public Law 100–297.

Purpose of the Change

The purpose of this change is to ensure that all children with disabilities as defined under IDEA, including those students living in dormitories, are provided a free and appropriate public education in the least restrictive environment under a neutral placement funding formula.

Detailed Discussion of Change

Education found that the definitions in our current regulations do not encourage neutral placement funding for children with disabilities as required by IDEA. As now written, the regulations inadvertently encourage schools to place the children outside the regular classroom in order to receive additional funding. (See § 39.11(i)(16), Full Time—High Service Level, and § 9.11(i)(17), Part Time—Moderate Service Level, and the weighted formula found in § 39.12.) As now written, the regulations also inadvertently encourage schools to place children in certain disability categories outside the regular classroom.

In response to the Department of Education's findings, we certified on January 2, 2001, that we would correct the ISEP formula. We presented these changes in the regulations to the various Indian tribes at consultation proceedings in several locations. We then reviewed and considered comments generated by those sessions and made changes to the formula based upon those comments. The changes resulting from this process:

1. Change the funding mechanism under ISEP to comply with Part B of IDEA;

2. Ensure the Department of Education that the Bureau is in compliance with the law; and

3. Provide a free and appropriate public education to children with disabilities and place them in an educational setting which provides the least restrictive environment appropriate to the child's disability.

No Child Left Behind Act of 2001—Negotiated Rulemaking Requirement

This interim rule is not intended to supplant the requirements of negotiated rulemaking defined under Public Law 107–110, No Child Left Behind Act of 2001 (NCLBA). We recognize our responsibility to include the ISEP formula in the negotiated rulemaking process and will do so. Negotiating changes under NCLBA would delay compliance with IDEA for at least 2 years and would jeopardize funding under Part B of IDEA. Therefore, until we complete the negotiated rulemaking process, the changes we publish today will ensure that we do not forfeit Part B monies because we have failed to comply with our certification to the Department of Education. In addition, it is in the public interest that all eligible students attending Bureau funded schools receive a free and appropriate public education in the least restrictive environment. Any delay in implementing these changes, pending notice and comment, might place those children in jeopardy of not receiving those services.

Determination To Make Rule Effective Immediately

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because of the good cause exception created under 5 U.S.C. (b)(3) which allows the agency to suspend the notice and comment period provisions. The Department further concludes that this rule should be effective

immediately because it relieves possible restrictions on the efficient and necessary distribution of IDEA Part B funds for all Bureau funded schools. It is in the public interest, and in the interest of the IDEA eligible students attending Bureau funded schools, not to delay implementation. However, BIA invites and will consider public comments submitted in response to this final rule. BIA will consider the comments and amend the rule as appropriate.

General Comments

Interested persons may submit written comments regarding the interim rule to William Mehojah, Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, Mail Stop 3512–MIB, Washington, DC, 20240; or hand-deliver to Room 3512 at the above address. You may send comments by facsimile to 202–208–3312. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submission from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Electronic Access and Filing

Electronic Access and Filing is not available at this time.

Regulatory Planning and Review (Executive Order 12866)

This interim rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(a) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For example, in School Year 2001—2002, BIA received $48,938,830 in Part B funds to distribute to Bureau funded schools; in School Year 2002—2003, BIA will receive $62,179,630 in Part B funds for distribution.

(b) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule applies only to Bureau-funded elementary and secondary schools enrolling ISEP eligible students. The Bureau of Indian Affairs has worked closely with the Department of Education in preparing this rule.

(c) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The program does not impose any additional rights to any other program.

(d) This rule does not raise novel legal or policy issues. The regulations have not changed since the passage of Title XI, the Education Amendments of 1978, Public Law 95–561, November 1978, establishing formula funding for Bureau-funded elementary and secondary schools.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to Indian tribes.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

(a) Does not have an annual effect on the economy of $100 million or more. The amount of money available for special education servicing eligible ISEP students is $48,938,830 in School Year 2001–2002, and $62,179,630 in School Year 2002–2003.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The small amount of money and the student oriented uses of the funding are too limited to affect competition between U.S. firms and foreign-based firms.

Unfunded Mandates Reform Act

This interim rule imposes no unfunded mandates on any government or private entity of more than $100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector because of the limited amount of special education funds available. A statement containing the information required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (Executive Order 12630)

The Department has determined that this interim rule does not have ''significant'' takings implications. The interim rule does not pertain to ''taking'' of private property interests, nor does it impact private property.

Federalism (Executive Order 13132)

The Department has determined that this interim rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

Civil Justice Reform (Executive Order 12988)

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

National Environmental Policy Act

The Department has determined that this interim rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Department of the Interior reviewed and sent an information collection request package to the Office of Management and Budget for its approval. The information collection, with OMB Control Number of 1076–0122, was approved for use until June 30, 2002. We are currently renewing OMB approval for this information collection. This change to the regulations will not affect the information collection. All information is collected annually from each eligible ISEP student. The annual responses are submitted in order to maintain or to obtain a benefit, specifically funding for instructional and/or residential programs covered by the Indian School Equalization Program. Please note that we will not sponsor nor conduct, and a person need not respond to, a request for information unless we have a valid OMB Control Number.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In keeping with this Executive Order and with the Bureau's Government-to-Government Consultation Policy, the rewriting of this interim rule was subject to a process involving the open discussion and joint deliberation of options with respect to potential issues or changes between the Bureau and all interested parties, in May 1998 and July 2000.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with it clarity? (3) Does the format of the rule (grouping and order of the sections, use of headings, paragraphing, etc.,) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 39.1 Purpose and scope). (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the interim rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this interim rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

List of Subjects in 25 CFR Part 39

Indians—education, Schools, Elementary and secondary education programs, Grant programs—Indians, Government programs—education.

For the reasons given in the preamble, we are amending selected sections of part 39 of Title 25 of the Code of Federal Regulations as follows:

PART 39—INDIAN SCHOOL EQUALIZATION PROGRAM

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

Authority: 25 U.S.C. 13; 25 U.S.C. 2008.

2. In § 39.11, remove paragraph (h)(2)(v) and remove paragraphs (i)(16) through (18).

3. Revise § 39.12 to read as follows:

§ 39.12 Instructional funding.

(a) Schools are to use the following sources to fund their special Education programs:

(1) 15 percent of the Indian Student Equalization Program (ISEP) funds generated by their ADM; and

(2) Funds under Part B of the Individuals with Disabilities Education Act (IDEA), if the 15 percent of ISEP funds is inadequate to fund the services needed by all eligible ISEP students with disabilities.

(b) All ISEP special education funds must be spent before the need for Part B of IDEA funds can be demonstrated. Part B funds are designed to provide for special education needs not funded by ISEP. By demonstrating that 15 percent of the ISEP base instructional funds were spent on special education, there is support for the need for Part B funds.

(c) To receive ISEP special education funding a student must be:

(1) At least 5 years old by December 31 to be counted as a kindergarten student;

(2) At least 6 years old by December 31 to be counted as a first grade student; and

(3) Under 22 years of age and not have received a high school diploma or its equivalent on the first day of full attendance during the ISEP student count week.

(d) A school may spend ISEP funds on school-wide programs to benefit all students (including those without disabilities) only if all of the following conditions are met:

(1) The school sets aside 15 percent of the basic instructional allotment to meet the needs of students with disabilities;

(2) The school can document that it has met all needs of students with disabilities and addressed all components of IDEA; and

(3) There are unspent funds after the conditions in paragraphs (d)(1) and (d)(2) of this section are met.

(e) Public Law 100–297 establishes a weighted unit for each ISEP-eligible full-time student that is gifted and talented. The weighted unit for gifted and talented is 2.0 weighted student units minus the basic instructional program weight by grade level. The weights for eligible gifted and talented students must be computed according to the following revised weighted student unit factors:

Grade level	Add-on weight
Kindergarten	0.85
Grades 1 to 3	0.62
Grades 4 to 6	0.85
Grades 7 to 8	0.62
Grades 9 to 12	0.50

(f) This paragraph applies to disabled students who are eligible for ISEP and were not counted during the ISEP Student Count Week. Schools must fund services for these students using the 15 percent of the ISEP funds based upon the school ADM for those students counted during the ISEP Student Count Week. *See* paragraph (a)(2) of this section for further guidance.

(g) To compute the funding for individual elementary and secondary children, schools must use the weighted student unit factors in paragraphs (g)(1) and (g)(2) of this section.

(1) The factors for basic programs are contained in the following table:

Basic programs	Base weights
Kindergarten	1.15
Grades 1 to 3	1.38
Grades 4 to 6	1.15
Grades 7 to 8	1.38
Grades 9 to 12	1.50

(2) For each student in the intense bilingual supplemental program, the school must add to the base weight an add-on weight of .20.

4. Revise § 39.13 to read as follows:

§ 39.13 Residential funding.

Basic funds for student residential purposes must be computed according to the following weighted student unit factors:

Basic programs	Add-on weights
Grades 1 to 3	1.40
Grades 4 to 8	1.25
Grades 9 to 12	1.25
Intensive Residential Guidance	.50

Dated: August 5, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–20497 Filed 8–12–02; 8:45 am]

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Federal Register

Tuesday,
August 13, 2002

Part IV

Department of Housing and Urban Development

24 CFR Part 3284
Manufactured Housing Program Fee; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3284

[Docket No. FR–4665–F–02]

RIN 2502–AH62

Manufactured Housing Program Fee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: In accordance with recent statutory direction, the Department is publishing this rule to modify the amount of the fee that is collected from manufacturers of manufactured homes to fund HUD's responsibilities under the National Manufactured Housing Construction and Safety Standards Act of 1974. The rule also sets minimum payments to States participating in the program as State Administrative Agencies. This final rule follows publication of an April 15, 2002, proposed rule and takes into consideration public comments received on the proposed rule. This final rule adopts the proposed rule without substantive change.

DATES: *Effective Date:* September 12, 2002.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–6401 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 2002, the Department published a proposed rule (67 FR 18398) to modify the amount of the fee to be collected from manufactured home manufacturers in accordance with section 620(d) (42 U.S.C. 5419(d)) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act). These fees are used to offset HUD's expenses for carrying out its responsibilities under the Act and have not been increased for over 12 years. Section 620(d) of the Act, added by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569, 114 Stat. 2944, approved December 27, 2000) (the MHI Act), provides that the amount of any fee ''may only be modified: (1) as specifically authorized in advance in an annual appropriations Act; and (2) pursuant to rulemaking in accordance with section 553 of title 5, United States Code.'' (Section 553 of title 5, United States Code contains the ''informal'' rulemaking requirements of the Administrative Procedure Act.) Section 620(e) of the Act (unless otherwise noted in this preamble, references to a section of the Act include the amendments made to that section by the MHI Act) further provides that amounts from any fee shall be available for expenditure only to the extent approved in advance in an annual appropriations Act.

The fee that HUD collects under the Act is levied upon the transportable sections of each new manufactured housing unit, and the total amount of the fees that HUD collects annually is dependent upon the number of transportable sections produced per year. The amendments made by the MHI Act in section 620(d) of the Act, which make the modification of the amount of the fee subject to implementation only pursuant to rulemaking in accordance with section 553 of title 5, United States Code, prompt this rulemaking.

II. This Final Rule

This rule establishes a new part 3284, under which the amount of the fee is codified. This final rule adopts the proposed rule with only minor changes.

The amount established in this rule is unchanged from the final rule and has been determined by dividing $13,566,000, the amount appropriated for Fiscal Year (FY) 2002, by 350,000, the number of manufactured housing transportable units projected to be produced in the FY. This calculation results in a revised fee of $39. The explanation of this calculation of the amount of the fee has been removed from the final rule as unnecessary.

The final rule also clarifies in § 3284.5 that the manufacturer that must pay the fee of $39 is the ''manufacturer'' as defined in § 3282.7.

In accordance with section 620(e)(3) of the Act, which was also added by the MHI Act, this rule also provides (as it did at the proposed rule stage) that HUD will continue to fund States that have approved State plans in amounts not less than the allocated amounts, based on the fee distribution system in effect on December 26, 2000. The yearly payment to a State would be set by this rule as not less than the amount paid to that State for the 12 months ending on December 26, 2000. As a conforming matter, this final rule adds a specific reference to States having approved plans to § 3284.1, Applicability.

III. Public Comments

HUD specifically invited comment on the projected number of transportable sections. None of the commenters suggested that a different production projection should be used in the final calculation of the amount of the fee. Therefore, the projected production level announced in the proposed rule has been used in the final calculation of the fee.

HUD received comments from 15 commenters on other aspects of the fee. These comments resulted in the issues set out in the numbered comments that follow, together with HUD's responses.

Comment 1: HUD's proposed fee modification was not specifically authorized in advance in an annual appropriations Act. Congress has not specifically authorized an increase in the amount of the label fee.

Response: Section 620(d) of the Act states that the ''amount of any fee . . . may only be modified'' when two conditions are met: (1) in advance of HUD's modification, Congress specifically authorizes in an appropriations Act that the amount of the fee be modified; and (2) the modification is made through notice-and-comment rulemaking. In HUD's FY 2002 Appropriations Act (Pub. L. 107–73, 115 Stat. 651, 669, approved November 26, 2001), Congress appropriated $13,566,000 for the manufactured housing program, and specifically directed that the fee established and collected pursuant to section 620 of the Act ''shall be *modified* as necessary'' to ensure that the general fund of the Treasury could be reimbursed by fee collections received up to the amount of the appropriation (emphasis added). Therefore, through this rule, HUD is modifying the amount of the fee as specifically authorized by Congress, *i.e.,* HUD is modifying the amount of the fee based on the amount necessary to collect $13,566,000. HUD, therefore, both has satisfied the requirement in section 620(d)(1) and is complying with the subsequent congressional enactment in the FY 2002 Appropriations Act.

Comment 2: Establishment of a specific level of appropriation by Congress does not satisfy the requirement that a modification of the amount of the fee be specifically authorized. Rather, specific advance authorization in an annual appropriations Act is required for both program expenditures (section 620(e)) and fee changes (section 620(d)).

Response: Congress authorized HUD, in its FY 2002 Appropriations Act, to spend up to $13,566,000 for the

manufactured housing program for the fiscal year. In addition, as discussed in the response to Comment 1, Congress mandated that fees be modified as necessary to ensure that the general fund of the Treasury could be reimbursed for that amount. Therefore, Congress has authorized program expenditures, as contemplated in section 620(e), and has authorized modification of the amount of the fee, as contemplated in section 620(d).

Comment 3: If specific authorization of a level of program expenditures, as required under section 620(e), also authorizes a fee increase, the provision in section 620(d) is surplusage.

Response: As discussed above, HUD does not base its authority to issue this rule on the fact that Congress established a level of program expenditures, as referenced in section 620(e), but on the fact that Congress mandated in the FY 2002 Appropriations Act that fees be modified to ensure a level of collections that is defined by the amount of the appropriations for the program. This mandate comports with the requirements in section 620(d).

Comment 4: The opportunity for HUD to receive and consider evidence of projected production levels through a proposed rule are limited at best, so HUD should ask Congress for a specific fee modification. Congress can thoroughly test and evaluate the relevant information.

Response: If Congress is to analyze such information and make a determination of a specific fee amount, there is little justification for the other statutory requirement that the amount be subject to notice-and-comment rulemaking. Congress does not ordinarily involve itself with this level of management of such regulatory programs, and the mandate in the FY 2002 Appropriations Act that HUD modify fees as necessary to ensure the level of appropriations reflects authorization by Congress for HUD to pursue a fee modification within certain limits. The requirement in the Act for notice-and-comment rulemaking in accordance with the Administrative Procedure Act satisfies the interest of Congress in establishing appropriate safeguards for HUD's modification of the amount of the fee.

Comment 5: The formula used by HUD to determine the fee level is appropriate, but should only be applied after HUD follows the processes and procedures in the Act.

Response: As discussed previously, HUD believes that it has followed the required procedures. HUD agrees with the commenter that the formula used to establish the new level of the fee is appropriate, and notes that none of the commenters suggested changes to the production levels used by HUD to calculate the final fee.

Comment 6: One of the stated purposes of the Act is ''to ensure that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to the Federal standards and their enforcement.'' This statement of purpose mandates a specific analysis of the impact of the increased fee on the affordability of manufactured housing. Further, the Conferees on the FY 2002 HUD Appropriations Act directed HUD ''to identify the use of all program fees as part of the fiscal year 2003 HUD Budget Justification.''

Response: HUD has always believed that it was required to consider the potential effect of its actions in the manufactured housing program on the cost of this affordable housing alternative. HUD has considered the potential effect on cost of raising the fee to $39. It is HUD's position that the $15 increase would have a negligible effect on the cost of manufactured housing. While the amount of the fee has been increased in comparison to the earlier fee, the $39 fee still represents a very small proportion of the overall cost of a manufactured home. However, cost is not the only important consideration. The first purpose stated in the Act is ''to protect the quality, durability, safety, and affordability of manufactured homes.'' The Conferees also directed HUD ''to place a priority on monitoring safety inspection of homes and the issuance of inspection labels when determining the funding requirements for this program during fiscal year 2002.'' H.R. Conf. Rep. No. 107–272, p. 112 (2001). HUD has done everything required to meet the various mandates established by Congress in the authorizing statute for the manufactured housing program, the appropriations process, and other relevant legislation, as well as various Executive Branch issuances.

Comment 7: Before the final rule, HUD should publish specific information with line-by-line details about its proposed program expenditures.

Response: HUD is not required to publish such information. Choosing the most appropriate management of a Federal program is a governmental function. While the public has the right and a responsibility to observe government operations, the public is represented in the management of individual programs through elected officials and the structure of the powers accorded to the branches of the Federal government. The Secretary has the statutory responsibility to administer an effective program that ensures the quality, durability, safety, and affordability of manufactured homes. In order to meet that responsibility efficiently, the Secretary has concomitant authority to manage the resources dedicated to the program, subject to the law and the direction of the President.

On the other hand, Congress has the authority and responsibility to establish appropriations levels for government operations, and HUD has provided, and will continue to provide, Congress with the information it needs to review HUD's operating budget for this program. Through this process, the public will be assured that their representatives have determined the level of Federal oversight that is appropriate in exchange for the benefit of Federal preemption of multiple State and local construction and safety requirements as applied to manufactured housing.

Comment 8: HUD has used program fees to engage in unauthorized activities.

Response: HUD strongly disagrees with this comment. In fact, although legal challenges to HUD's actions are rare, no court has ever found that HUD has acted outside of its authority or responsibility in this program. HUD has always been careful to ensure that its actions are legal and appropriate. In addition, HUD has tried to be responsive, in proportion to its program responsibilities, when consumers or industry participants present questions about the authority for, or effectiveness of, HUD's actions within the manufactured housing program.

Comment 9: It is unfair to manufacturers and consumers and a violation of the Act for HUD to increase the label fee by 62.5 percent. HUD should phase in the fee increase over several years to be more in line with inflation indices.

Response: As noted in the preamble of the proposed rule, the regulatory fee assessed for each section of manufactured housing to assure the public that such housing meets a minimum level of performance and safety has not been increased for over 12 years. In addition, Congress amended the statute in December 2000 to require the Secretary to exercise significant new responsibilities for nationwide programs for installation and dispute resolution and for a consensus rulemaking procedure, and to authorize the Secretary to use fee collections to fund a new program administrator. Although

the amount of increase of the fee appears large as a percentage change, the percent-increase statistic mostly reflects a very small initial fee and a substantial increase in the program responsibilities.

Further, in recent years fee revenue has not covered program expenses, even though HUD has significantly reduced ''monitoring safety inspections'' and other oversight activities performed by HUD staff with the assistance of HUD contractors. As discussed in the response to Comment #6, the Conferees on HUD's FY 2002 Appropriations Act had directed HUD to place a priority on monitoring safety inspections of homes when determining the funding requirements for the program during FY 2002. In addition, certain regulatory functions that do not depend on the level of production must continue to be performed, such as monitoring Design Approval Primary Inspection Agencies (DAPIA's), Production Inspection Primary Inspection Agencies (IPIA's), and State Administrative Agencies (SAA's) and training. These functions are necessary to protect consumers and the public, and to maintain confidence in the industry's product. Nevertheless, as fee revenues have fallen corresponding to diminished production levels, the program has reduced monitoring inspections and has exhausted reserve operating funds that had been available in the program account. Therefore, the $15-per-section fee increase at this time is reasonable and necessary.

Comment 10: OMB has determined that the rule is a ''significant regulatory action.'' As such, the proposed rule carries a significant risk of harming small manufacturing businesses, especially at a time when production levels are down.

Response: The OMB designation is dictated by Executive Order 12866 and does not necessarily establish a risk of harm. Most rules that receive this designation are deemed significant because they either have an annual economic effect of at least $100 million, or adversely affect in a material way a sector of the economy or public health or safety. The proposed rule noted that OMB did not determine that the proposal was economically significant. Rather, the designation resulted from another criterion: it ''raise(s) novel legal or policy issues arising out of legal mandates.* * *'' The comments, as presented and responded to in this preamble, reflect such ''novel'' issues, and validate the OMB designation of the rule as a significant regulatory action. As noted in the response to Comment 6, HUD has undertaken all of the required analyses and met all of its responsibilities in issuing this rule.

Comment 11: The State's cost to carry out the required functions of an SAA is much higher than the funding provided by HUD, and will increase as the State takes on additional responsibilities related to retailer alterations and inspections and installation. Proposed § 3284.10 should be modified to guarantee a State payment of at least $50,000.

Response: The rule ensures that HUD's payments to the States will comply with the statutory minimum requirement. HUD appreciates that a higher payment may permit some States to participate more consistently in the manufactured housing program, and HUD would like to encourage such participation. In the past, HUD has considered whether establishment of a minimum payment such as $50,000 would be feasible, and in the future, such payments may be possible. This rule merely establishes a minimum payment to the States; it does not prevent HUD from taking action in the future to seek higher payments to States, if such payments are found to be feasible, and it does not affect the per-section payments to be made to the States under current regulations. Because the demands on the program funds are so great at this time, however, HUD has not proposed the change suggested by the commenter.

Comment 12: Based on HUD's stated intent in the final rule that established the current fee distribution system (56 FR 65183, December 16, 1991), proposed § 3284.10 should be modified to provide that 38 percent of each label fee be paid to the State in which a new manufactured home is sited, and 8 percent of each label fee be paid to the State in which a new home is produced. This would help the States to meet the costs associated with the new requirements for dispute resolution and installation programs.

Response: HUD believes that § 3284.10 in today's final rule is a reasonable interpretation of the intent of Congress, especially in light of the December 1991 rule cited by the commenter (56 FR 65183). In the December 1991 rule, HUD changed the method of payments to States from a formula focused solely on the State of siting to a formula based on both the States of production and siting. HUD expressly rejected utilization of a fixed percentage to define the payments to States, stating that ''a more equitable method of distribution of funds to SAAs is one based on a fixed fee dollar amount.'' (56 FR 65184–5) HUD noted that utilization of a percentage formula could have the effect of requiring HUD to seek unnecessarily high fee increases in the future, in order to cover HUD's needs but maintain the percentages specified for distribution to the States. (*See* 56 FR 65184.)

However, HUD understands that the States may need funding beyond what is provided by HUD pursuant to new § 3284.10 and 24 CFR 3282.307(b) to implement optional new State programs for dispute resolution and installation. In the December 1991 rule, HUD also noted that States could assess their own fees to defray expenses in excess of funding received from HUD. (*See* 56 FR 65185) The law relating to this power of the States has not changed; nor has the requirement that a State participating as an SAA must provide satisfactory assurance that it will devote adequate funds to the administration and enforcement of the standards.

As discussed in the response to Comment 11, this rule merely establishes a minimum payment to the States that complies with the requirements of the Act and does not foreclose future actions regarding payments to the States. The provision is not intended to minimize the States' importance to the program, or to limit the amount of funding that could eventually be made available to the States from fee collections. HUD and the Consensus Committee can consider increasing the amounts available to the States for carrying out their approved State plans as part of future rulemaking.

Comment 13: HUD's FY 2002 appropriation request of $13,566,000 did not consider the States' costs to implement the Act. However, this amount was intended to cover HUD's costs for services that are no longer necessary because of lower production levels, and the difference could be used for additional funding to the States.

Response: In its budget request, HUD considered the moneys that would need to be paid to the States for activities conducted under approved State plans, which the Act authorizes to be offset from the fee. Congress did not appropriate the full amount initially requested by HUD for the manufactured housing program in FY 2002. Even with lower production levels, HUD does not expect to be able to perform all of its program activities at optimal levels during the fiscal year. As discussed in the response to Comment 9, certain of HUD's regulatory functions must continue to be performed, regardless of the level of production. Therefore, HUD's regulatory responsibilities are not reduced in direct correlation to reduced production levels. HUD does not have any reserves available to fund

program activity, but if such reserves are available in the future, HUD agrees that increased funding for approved State activities should be given priority consideration.

IV. Findings and Certifications

Paperwork Reduction Act Statement

Although there are no information collection requirements in this rule, which establishes the fee to be collected from manufacturers of manufactured homes to fund HUD's responsibilities under the National Manufactured Housing Construction and Safety Standards Act of 1974, the collection of the fee is related to a form that has been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The form has been assigned OMB control number 2502–0233. However, the form will be modified to reflect the cost data as modified by this rule, and a modification has been submitted to OMB with a request for approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, this rule sets forth fiscal requirements which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore is categorically excluded from the requirements of the National Environmental Policy Act and related Federal laws and authorities.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will have a total economic impact this Federal Fiscal Year of no more than $13,566,000, the amount approved by Congress in HUD's FY 2002 Appropriations Act. Congress further requires HUD to collect this amount in fees from manufacturers of manufactured housing. The rule will implement this mandate by establishing a per unit fee on transportable sections of manufactured housing that is proportional in its impact, with a greater impact on larger manufacturers and a lesser impact on smaller manufacturers.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 3284

Consumer protection, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD adds 24 CFR part 3284, as follows:

PART 3284—MANUFACTURED HOUSING PROGRAM FEE

Sec.
3284.1 Applicability.
3284.5 Amount of fee.
3284.10 Payments to States.

Authority: 42 U.S.C. 3535(d), 5419 and 5424.

§ 3284.1 Applicability.

This part applies to manufacturers that are subject to the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act), and to States having State plans approved in accordance with the Act. The amounts established under this part for any fee collected from manufacturers will be used, to the extent approved in advance in an annual appropriations Act, to offset the expenses incurred by HUD in connection with the manufactured housing program authorized by the Act.

§ 3284.5 Amount of fee.

Each manufacturer, as defined in § 3282.7 of this chapter, must pay a fee of $39 per transportable section of each manufactured housing unit that it manufactures under the requirements of part 3280 of this chapter.

§ 3284.10 Payments to States.

Each calendar year HUD will pay each State that, on December 27, 2000, had a State plan approved pursuant to subpart G of part 3282 of this chapter a total amount that is not less than the amount paid to that State for the 12 months ending at the close of business on December 26, 2000.

Dated: August 6, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–20526 Filed 8–8–02; 4:49 pm]

BILLING CODE 4210–27–P

Federal Register

Tuesday,
August 13, 2002

Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Request for comments on title III of the Assistive Technology Act and the need for rulemaking.

SUMMARY: The Assistant Secretary invites written comments on the Alternative Financing Mechanisms Program (AFP) under title III of the Assistive Technology Act (AT Act) of 1998, which is administered by the National Institute on Disability and Rehabilitation Research (NIDRR). We encourage individuals to comment on how well the purpose and objectives of title III are being met by the States and suggestions for improving the implementation of title III. In particular, we are soliciting written comments in order to determine what issues have arisen in the implementation of the AFP that could be addressed through rulemaking. We are particularly interested in comments related to the following:

(1) Selection criteria for the review of applications and the experience and expertise required of the reviewers;

(2) How words and terms used in title III such as ''cash,'' ''permanent and separate account,'' ''community-based organization,'' ''obligation period,'' ''project period,'' ''reporting period'' should be interpreted within this authority;

(3) Data collection, reporting requirements and deadlines;

(4) The fiscal, administrative, and programmatic responsibilities of grantees and community-based organizations, and the scope and nature of fiscal control and administrative oversight required for a permanent AFP; and

(5) The ways in which title III may be used by employers to secure loans, guarantee loans, and purchase AT devices or services for employees with disabilities for whom the employer does not have an Americans with Disability Act (ADA) responsibility.

While we seek comments on any aspect of the implementation of Title III, the purpose of this solicitation is to aid us in considering where rulemaking may be necessary to clarify and enhance understanding of the existing statute in an effort to stimulate States' interest in the program and to increase the number of high quality applications. We cannot consider for rulemaking comments suggesting statutory changes.

DATES: We would like to receive your written comments on Title III on or before September 12, 2002.

ADDRESSES: Address all comments to Carol Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3420, SW., Washington, DC 20202–2645. Fax: (202) 205–8515. If you prefer to send your comments through the Internet, use the following address: *carol.cohen@ed.gov.*

During and after the comment period, you may inspect all public comments about these priorities in room 3420, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Comments

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. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Carol G. Cohen, Telephone: (202) 205–5666.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *carol.cohen@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background and Description of Title III of the Assistive Technology Act of 1998

The purpose of the AFP under title III is to maximize independence and participation in society by individuals with disabilities by assisting them in obtaining AT. The AFP pays a share of the cost of establishment or expansion, and administration of programs that offer individuals with disabilities, their families and authorized representatives funding alternatives to the traditional payment options of public assistance and self-financing for AT devices and services. Under the AFP, a grantee may implement one or more alternative financing mechanisms to allow individuals with disabilities and their family members, guardians, advocates, and others to purchase AT devices and services.

NIDRR funded six States under the AFP in FY 2000 and 14 States in FY 2001. In FY 2000, NIDRR funded one Technical Assistance project for a 24-month period to assist States as they prepare applications for AFP grants and to assist recipients of grants to develop and implement the new loan programs in their States. Loan programs enhance access to AT devices and services in a way that underscores independence and inclusion.

The New Freedom Initiative (NFI)

NIDRR is interested in suggestions for the implementation of Title III that will contribute to one or more of the following objectives that support the NFI. The NFI is designed to help individuals with disabilities by increasing access to assistive technologies, expanding educational opportunities, increasing the ability of individuals with disabilities to integrate into the workforce, and promoting increased access into daily community life.

Objectives that support the NFI are the following:

- Increasing access to assistive and universally designed technologies through alternative financing mechanisms.
- Expanding educational opportunities for individuals with disabilities through increased access to AT.
- Integrating individuals with disabilities into the workforce through increased availability of AT and purchasing opportunities.
- Expanding telecommuting; promoting innovative transportation solutions through the provision of an alternative loan program.
- Promoting full access to community life through the increased acquisition of AT.
- Promoting the successful implementation of the Olmstead Decision by virtue of increased access to AT.

Availability of Copies of the NFI

The NFI can be accessed at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

Individuals who are unable to access the Internet may obtain copies of the NFI by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** Individuals with disabilities may obtain a copy of the NFI in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the person listed under **FOR FURTHER INFORMATION CONTACT.**

Recommended Format for Comments

We recommend that your written comments be no longer than two single-spaced pages. We recommend that your comments include the following information:

(1) A brief background statement on your relationship to or interest in the Title III program and description of the problem or issue that you are addressing.

(2) A description of the activities or guidance that could address the identified problem or issue.

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(Catalog of Federal Domestic Assistance Number 84.224C, Alternative Financing Program.)

Program Authority:

29 U.S.C. 3051–3056.

Dated: August 8, 2002.

Loretta Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–20475 Filed 8–12–02; 8:45 am]

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