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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Chapters XVIII and XLII

Policy Statement for Direct Final Rulemaking

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Policy statement.

SUMMARY: The Rural Business-Cooperative Service (RBS) is implementing a new rulemaking procedure to expedite making noncontroversial changes to its regulations. Rules that RBS judges to be noncontroversial and unlikely to result in adverse comments will be published as ''direct final'' rules. ''Adverse comments'' are those comments that suggest a rule should not be adopted or suggest that a change should be made to the rule. Each direct final rule will advise the public that no adverse comments are anticipated, and that, unless written adverse comments or written notice of intent to submit adverse comments is received within 30 days from the date the direct final rule is published in the **Federal Register**, the rule will be effective 45 days from the date the direct final rule is published in the **Federal Register**. At the same time, RBS may publish a document in the proposed rules section of the same issue of the **Federal Register** proposing approval of and soliciting comments on the same action contained in the direct final rule. If adverse comments or notice of intent to file adverse comments are received by RBS, the direct final rule will be withdrawn prior to the effective date. RBS will address the comments received in response to the direct final rule in a subsequent final rule. This new policy should expedite promulgation of non-controversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

FOR FURTHER INFORMATION CONTACT: Pandor H. Hadjy, Assistant Deputy Administrator, Business Programs, RBS, U.S. Department of Agriculture, Room 5050–S, 1400 Independence Avenue, SW., STOP 3220, Washington, DC 20250–3220; Telephone: 202–720–9693; Facsimile: 202–690–0097; E-mail: *pandor.hadjy@usda.gov.*

SUPPLEMENTARY INFORMATION: RBS is committed to improving the efficiency of its regulatory process. In pursuit of this goal, we plan to employ the rulemaking procedure known as ''direct final rulemaking'' to promulgate some RBS rules.

The Direct Final Rule Process

Rules that RBS judges to be noncontroversial and unlikely to result in adverse comments will be published in the **Federal Register** as direct final rules. At the same time, RBS may publish a document in the proposed rules section of the same issue of the **Federal Register** proposing approval of and soliciting comments on the same action contained in the direct final rule. Each direct final rule will advise the public that no adverse comments are anticipated, and that, unless adverse comments are received within 30 days, the direct final rule will be effective 45 days from the date the direct final rule is published in the **Federal Register**. ''Adverse comments'' are comments that suggest that the rule should not be adopted or that suggest that a change should be made to the rule. A comment expressing support for the rule as published will not be considered adverse. Further, a comment suggesting that requirements in the rule should or should not be employed by RBS in other programs or situations outside the scope of the direct final rule will not be considered adverse. If RBS receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, a document withdrawing the direct final rule prior to its effective date will be published in the **Federal Register** stating that adverse comments were received. If RBS concurrently published a notice of proposed rulemaking RBS will address the comments received in response to the direct final rule in a subsequent final rule on the related proposed rule. In such cases, RBS will not institute a second comment period on the action.

In accordance with rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 533), the direct final rulemaking procedure gives the public general notice of RBS' intent to adopt a new rule and gives interested persons an opportunity to participate in the rulemaking process through submission of and consideration by RBS of comments. The major feature of the direct final rulemaking process is that if RBS receives no written adverse comments and no written notice of intent to submit adverse comments within the comment period specified, RBS will publish a document in the **Federal Register** stating that no adverse comments were received regarding the direct final rule and confirming that the direct final rule is effective on the date in the direct final rule.

Determining When To Use Direct Final Rulemaking

Not all RBS rules are good candidates for the direct final rulemaking. RBS intends to use the direct final rulemaking procedure only for rules that we consider non-controversial and unlikely to generate adverse comments. The decision whether to use the direct final rulemaking process for a particular action will be based on RBS' experience with similar actions.

Dated: October 31, 2002.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 02–29480 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 562

[No. 2002–54]

RIN 1550–AB54

Regulatory Reporting Standards: Qualifications for Independent Public Accountants Performing Audit Services for Voluntary Audit Filers

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting an interim final rule that amends its annual independent audit requirements for small, non-public, highly rated savings associations that voluntarily obtain independent audits. This change will make OTS's requirements more consistent with those of the other federal banking agencies and will avoid the potential regulatory burden that could otherwise result from other regulatory action.

DATES: This interim rule is effective November 25, 2002. Written comments must be received by December 26, 2002.

ADDRESSES:

Mail: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2002–54.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, No. 2002–54.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention: Regulations Comments, No. 2002–54.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov,* Attention: No. 2002–54, and include your name and telephone number.

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

FOR FURTHER INFORMATION CONTACT: Christine Smith, Project Manager, (202) 906–5740, Examination Policy Division, or Teresa A. Scott, Counsel (Banking & Finance), (202) 906–6478, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Changes

Savings associations that are publicly traded,[1] have assets of $500 million or more,[2] or have a 3, 4, or 5 CAMEL rating[3] must obtain and file an annual independent audit. Small, non-public, 1- or 2-rated savings associations are not required to obtain an independent audit. Currently, OTS regulations require that public accountants conducting these independent audits (whether required or voluntary) follow the SEC independence rules, including those governing outsourcing of non-audit services. 12 CFR 562.4(d) and (e) (2002).

In 1994 when OTS originally promulgated §§ 562.4(d) and (e), OTS believed that the SEC independence rules provided an appropriate standard for assessing auditor independence and that this standard would not unduly burden small, non-public, highly rated savings associations that file voluntary audits with OTS.[4] Because recent statutory changes intended to reach publicly traded institutions would indirectly affect these voluntary filers, OTS has reexamined the use of this standard.

On July 30, 2002, Congress passed the Sarbanes-Oxley Act of 2002.[5] Title II of that act sets forth standards for auditor independence. Specifically, section 201(g)(5) prohibits a registered public accountant from performing an audit for a public company contemporaneously with providing that company with delineated non-audit services, including internal audit outsourcing services. This congressional mandate would affect a change in the SEC independence rules.

If OTS rules remain unchanged, a savings association that obtains a voluntary audit may not use its external auditors to perform non-auditing services.[6] Although OTS encourages non-publicly held savings associations that voluntarily file audits with the agency to follow the prohibition from Sarbanes-Oxley, OTS is concerned that an absolute prohibition in this manner may be unnecessarily detrimental to some voluntary filers. Specifically, OTS believes that small institutions with less complex operations and limited staff, may, in some instances, use their independent public accountant to perform both an external audit and some or all of an audit client's non-audit activities consistent with the OTS's safety and soundness objectives. Some of these institutions may not have access to a full range of qualified public accountants such that they could engage both an external auditor and a different outside firm to perform non-audit functions. Other institutions may reasonably have determined that the costs of having a full time in-house staff to perform those services exceed the benefits.

Moreover, none of the other banking agencies require that institutions that file voluntary audits follow the SEC independence rules. Requiring savings associations to do so may place these savings associations at an unnecessary competitive disadvantage as these requirements became more restrictive. Therefore, OTS is amending its regulation to eliminate the requirement that institutions voluntarily filing audits comply with the SEC independence rules.[7]

On the other hand, OTS continues to believe that auditor independence is important to the safety and soundness of all institutions and thus OTS is retaining the requirement that institutions filing voluntary audits comply with the AICPA Professional Conduct Code, including those sections that address independence. Further, OTS may monitor voluntary audit filers' non-audit outsourcing to ensure that institutions are properly preserving the independence between the two functions. OTS believes that this approach is the most effective means of maintaining comparability and consistency with the other banking agencies. This approach also reduces regulatory burden on savings associations filing voluntary audits consistent with safe and sound regulation.

[1] 17 U.S.C. 78m (West 2002). Generally, federally-chartered publicly traded savings associations file annual audits with OTS, while generally publicly traded federally-chartered thrift holding companies file audits with the Securities and Exchange Commission (SEC).

[2] 12 CFR 363.2 (2002). These institutions file annual audits with the Federal Deposit Insurance Corporation and OTS.

[3] 12 CFR 562.4(b). These savings associations file annual audits with OTS.

[4] The SEC modified its independence rules in December 2000. The modified rules, although more restrictive than those in effect in 1994, continued to provide an appropriate standard for savings associations that file audits voluntarily. However, see discussion below concerning changes required by the Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, § 201, 116 Stat. 745 (2002).

[5] Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, § 201, 116 Stat. 745 (2002).

[6] These services include bookkeeping, financial information systems design, appraisal, valuation, and actuarial services, and internal audit outsourcing services. For a complete list of prohibited activities, see *id.* at § 201.

[7] OTS understands that passage of the Sarbanes-Oxley Act may place increased responsibilities on small publicly held savings associations, including the prohibitions against outsourcing internal non-audit services to the association's external auditor. Nothing in this rule affects those requirements.

II. Justification for Interim Rule

A. Notice and Comment Requirement

Section 553 of the Administrative Procedure Act (APA) permits an agency to issue rules without prior notice and comment if the agency finds good cause and explains its finding when it publishes the rule. 5 U.S.C. 553(b)(B). A finding that notice and comment are impracticable, unnecessary, or contrary to the public interest constitutes good cause.

As discussed more fully above, OTS has examined the legislative changes made by the Sarbanes-Oxley Act and the potential impact of any implementing regulations on small, non-public savings associations. OTS believes that the interaction of these changes with OTS's current regulations on voluntary audits could significantly increase the regulatory burden on these small thrifts. Small, non-public banks and non-depository institutions are not covered by the new independence rules. Small, non-public, highly rated thrifts do not pose any greater risks.

Elimination of the regulatory requirement decreases burden on the industry and permits certain savings associations more flexibility in accessing the marketplace in search of non-audit services that may be performed by outside entities. The change also aligns OTS regulations more closely to those of the other banking agencies. Accordingly, OTS concludes that public notice and comment on these changes in advance of implementation are unnecessary and contrary to the public interest. Nonetheless, OTS invites comments on this interim rule during the 60-day period following its publication. In developing a final rule, OTS will consider all public comments it receives within that period.

B. Effective Date Requirement

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), 12 U.S.C. 4802, requires that new OTS regulations and amendments to existing regulations take effect on the first day of a calendar quarter that begins on or after the date of publication of the rule. This delayed effective date provision applies only if the rule imposes additional reporting, disclosure, or other new requirements on insured depository institutions.

As a related matter, section 553(d) of the APA states that a rule must not be made effective before 30 days after its publication. 5 U.S.C. 553(b)(B). This APA provision does not apply, however, if the rule grants or recognizes an exemption or relieves a restriction.

OTS concludes that neither CDRIA nor the APA precludes the publication of this rule with an immediate effective date. This rule makes only burden reducing amendments to OTS rules and relieves current requirements on independence and non-audit outsourcing activities.

II. Findings and Certifications

A. Executive Order 12866

The Director of OTS has determined that this interim rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, OTS must either provide an Initial Regulatory Flexibility Analysis (IRFA) with this interim rule, or certify that the rule would not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. It removes a requirement that could, if left unchecked, inadvertently lead to potential additional regulatory burden. The interim rule, which is written in plain language, reduces regulatory burden.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 [8] (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this interim rule will not result in expenditures by state, local, or tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, section 202 of the Unfunded Mandates Act does not require the OTS to prepare a budgetary impact statement for this rule.

[8] Pub. L. 104–4, 109 Stat. 48 (1995) (codified at 2 U.S.C. Chs. 17A, 25).

D. Paperwork Reduction Act

The OTS has determined that this interim final rule does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

For the reasons set out in the preamble, the Office of Thrift Supervision amends part 562 of chapter V, title 12, of the Code of Federal Regulations as follows:

PART 562—REGULATORY REPORTING STANDARDS

1. The authority citation for part 562 continues to read as follows:

Authority: 12 U.S.C. 1463

2. Amend § 562.4 by revising paragraphs (d)(3) and (e) to read as follows:

§ 562.4 Audit of savings associations and savings association holding companies.

* * * * *

(d) * * *

(3)(i) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

* * * * *

(e) *Voluntary audits.* When a savings association, savings and loan holding company, or affiliate (as defined by 12 CFR 563.41(b)(1)) obtains an independent audit voluntarily, it must be performed by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (d)(2), and (d)(3)(i) of this section.

Dated: November 18, 2002.

By the Office of Thrift Supervision.

James Gilleran,

Director.

[FR Doc. 02–29833 Filed 11–22–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–35–AD; Amendment 39–12953; AD 2002–23–09]

RIN 2120–AA64

Airworthiness Directives; MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to MT-Propeller Entwicklung GMBH Models MTV–9–B–C and MTV–3–B–C propellers. That AD currently requires initial and repetitive inspections of Torx head blade root lag screws that are used on certain serial number (SN) propellers and replacement of all lag screws on the propeller if any screws are found broken or with insufficient torque. In addition, that AD currently requires the replacement of certain part number (P/N) Torx head blade root lag screws with improved, hexagonal head blade root lag screws. This amendment requires the expansion of the applicability from certain SN propellers to all propellers with certain SN blades that may contain the suspect Torx head blade root lag screws. This amendment is prompted by FAA awareness that a propeller hub of an affected propeller could be changed, thereby changing the propeller serial number, creating a propeller that is not listed in the AD and that has affected blades and lag screws. The actions specified by this AD are intended to prevent failure of the blade root lag screw, which could result in propeller blade separation and loss of control of the airplane.

DATES: Effective December 30, 2002.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 23, 1999 (64 FR 36777, July 8, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33; fax (0 94 29) 84 32; Internet address: ''*propeller@aol.com*''. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7156, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–14–06, Amendment 39–11216 (64 FR 36777, July 8, 1999), which is applicable to MT-Propeller Entwicklung GMBH models MTV–9–B–C and MTV–3–B–C propellers was published in the **Federal Register** on February 27, 2002 (67 FR 8910). That action proposed to require the expansion of the applicability from certain serial number (SN) propellers to all propellers with certain SN blades that may contain the suspect Torx head blade root lag screws in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5, 1999.

Comments

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

Economic Analysis

There are approximately 250 propellers of the affected design in the worldwide fleet. The FAA estimates that 125 propellers installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 13 work hours per propeller to do the actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $97,500.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11216, (64 FR 36777 July 8, 1999) and by adding a new airworthiness directive, Amendment 39–12953, to read as follows:

2002–2–23–09 MT-Propeller Entwicklung GMBH: Amendment 39–12953. Docket No. 99–NE–35–AD. Supersedes AD 99–14–06, Amendment 39–11216.

Applicability: This airworthiness directive (AD) is applicable to MT-Propeller Entwicklung GMBH models MTV–9–B–C and MTV–3–B–C propellers equipped with CL250–27 or CL260–27 blades with serial numbers (SN's) starting with letter ''A'' through ''P'', equipped with Torx head blade root lag screws, part number (P/N) A–549–85 (3mm thread pitch), or P/N A–550–85 (4mm thread pitch); and Model MTV–3–B–C propellers, equipped with L250–21 blades with SN's starting with letter ''A'' through ''P'', equipped with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), or P/N A–550–85 (4mm thread pitch). These propellers are installed on, but not limited to, Sukhoi SU–26, SU–29, SU–31; Yakovlev YAK–52, YAK–54, YAK–55, and Technoavia SM–92 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Required as indicated, unless already done.

To prevent blade root lag screw failure, which could result in propeller blade separation and loss of control of the airplane, do the following:

(a) For propellers with Torx head blade root lag screws, P/N A–549–85 (3mm thread pitch), inspect Torx head blade root lag screws for torque values and breakage in accordance with MT-Propeller Entwicklung GMBH Service Bulletin (SB) No. 17–A, dated March 5, 1999, as follows:

(1) Initially inspect within 50 hours time-in-service (TIS), or within two months after the effective date of this AD, whichever occurs first.

(2) Thereafter, inspect at intervals not to exceed 100 hours TIS, or within 12 months, whichever occurs first.

(3) Before further flight, if any lag screws are found broken or with torque less than 64 foot-pounds, replace all lag screws with new lag screws.

(b) For propellers with lag screws, P/N A–550–85 (4mm thread pitch), inspect lag screws for torque values and breakage in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5, 1999, as follows:

(1) Inspect within 50 hours TIS, or within two months after the effective date of this AD, whichever occurs first.

(2) Before further flight, if any lag screws are found broken or with torque less than 64 foot-pounds, replace all lag screws with improved, hexagonal head blade root lag screws, P/N A–983–85. Torque screws to 58–60 foot-pounds.

(c) Replace lag screws, P/N A–550–85, within 100 hours TIS, or within 12 months after the effective date of this AD, with lag screws, P/N A–983–85, in accordance with MT-Propeller Entwicklung GMBH SB No. 17–A, dated March 5, 1999. Torque screws to 58–60 foot-pounds.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Documents That Have Been Incorporated by Reference

(f) The actions must be done in accordance with MT-Propeller Entwicklung GMBH service bulletin: 17A, dated March 5, 1999.

The incorporation by reference of MT-Propeller Entwicklung GMBH service bulletin: 17A, dated March 5, 1999, was approved by the Director of the Federal Register as of July 23, 1999 (64 FR 36777, July 8, 1999). Copies may be obtained from MT-Propeller Entwicklung GMBH, Airport Straubing-Wallmuhle, D–94348 Atting, Germany; telephone (0 94 29) 84 33, fax (0 94 29) 84 32, Internet address: *propeller@aol.com.* Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on December 30, 2002.

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

Francis A. Favara,

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

[FR Doc. 02–29354 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–13]

Establishment of Class D Airspace; Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Griffiss Airpark, Rome, NY. This action is necessary to insure continuous altitude coverage for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On September 27, 2002 a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace upward from the surface to and including 3,200 feet mean sea level (MSL) at Griffiss Airpark, Rome, NY was published in the **Federal Register** (67 FR 61045). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace area designations for airspace extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2003 and effective September 16, 2002. The Class D airspace designation listed in this document will be published in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace from the surface of the earth to and including 3,200 feet MSL within a 4 mile radius of the airport for aircraft conducting IFR operations at Griffiss Airpark, Rome, NY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth

* * * * *

AEA NY D Rome, NY [NEW]

Griffiss Airpark, Rome, NY
(Lat. 43°14′02″ N., long. 75°24′25″ W.)
Oneida County Airport, Utica, NY
(Lat. 43°08′43″ N., long. 75°23′02″ W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4-mile radius of Griffiss Airpark excluding the portion within the 4.2-mile radius of Oneida County Airport Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in Jamaica, New York on November 7, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–29902 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR 71

[Docket No. FAA–2002–13820; Airspace Docket No. 02–AGL–11]

Modification of Class E Airspace; Flint, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Flint, MI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) to several Runways (RWYS) have been developed for Prices Airport, Linden, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of existing controlled airspace at Bishop International Airport.

EFFECTIVE DATE: 0901 UTC, January 23, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Flint, MI (67 FR 53534). The proposal was to modify existing Class E airspace at Bishop International Airport, MI, in order to protect for several new RNAV SIAPS.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Flint, MI, by increasing the radius of controlled airspace around the Prices Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Flint, MI [Revised]

Flint, Bishop International Airport, MI
(Lat. 42°57′56″ N., long. 83°44′36″ W.)
Owosso Community Airport, MI
(Lat. 42°59′35″ N., long. 84°08′20″ W.)
Davison, Athelone Williams Memorial Airport, MI
(Lat. 43°01′45″ N., long. 83°31′47″ W.)
Linden, Prices Airport, MI
(Lat. 42°48′27″ N., long. 83°46′25″ W.)
PETLI LOM
(Lat. 42°58′05″ N., long. 83°53′25″ W.)
Grand Blanc, Genesys Regional Medical Center, MI
Point in Space Coordinates
(Lat. 42°52′59″ N., long. 83°39′05″ W.)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of the Bishop International Ayirport, and within 4.4 miles north and 7 miles south of the Flint ILS localizer west course, extending from the 10.5-mile radius area to 10.5-miles west of the PETLI LOM, and within a 6.4-mile radius of the Owosso Community Airport, and within a 6.4-mile radius of the Prices Airport, and within a 6.3-mile radius of the Athelone Williams Memorial Airport, and within a 6-mile radius of the Point in Space serving the Genesys

Regional Medical Center, excluding that airspace within the Detroit, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on November 13, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–29900 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13817; Airspace Docket No. 02–AGL–09]

Modification of Class E Airspace; Indianapolis, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Indianapolis, IN, Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) to several Runways (RWYS) have been developed for Indianapolis International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of existing controlled airspace at Indianapolis International Airport.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Indianapolis, IN (67 FR 53531). The proposal was to modify existing Class E airspace at Indianapolis International Airport, IN, in order to protect for several new RNAV SIAPs.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Indianapolis, IN, for Indianapolis International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Indianapolis, IN [Revised]

Indianapolis International Airport, IN
(Lat. 39° 43′ 02″N., long. 86° 17′ 40″W.)
Indianapolis, Greenwood Municipal Airport, IN
(Lat. 39° 37′ 42″, long. 86° 05′ 16″W.)
Indianapolis, Eagle Creek Airpark, IN
(Lat. 39° 49′ 51″N., long. 86° 17′ 40″W.)
Indianapolis, Eagle Creek Airpark, IN
(Lat. 39° 49′ 51″N., long. 86° 17′ 40″W.)
Indianapolis, Helicopter VOR/DME 287° Approach Point in Space
(Lat. 39° 42′ 12″ long. 86° 06′ 28″W.)
Brickyard VORTAC
(Lat. 39° 48′ 53″N., long. 86° 22′ 03″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Greenwood Municipal Airport, within a 6.3-mile radius of Eagle Creek Airpark, and within 2.6 miles each side of the Brickyard VORTAC 257° radial, extending from the 6.3-mile radius of the Eagle Creek Airpark and the 7.4-mile radius of the Indianapolis International Airport to 7-miles west of the VORTAC, and within a 6-mile radius of the Point in space serving the helicopter VOR/DME 287° approach.

* * * * *

Issued in Des Plaines, Illinois on November 13, 2002.

Richard K. Petersen,

Assistant Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–29899 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 234

[Docket No. OST 2000–8164]

RIN 2139–AA09

Reporting the Causes of Airline Delays and Cancellations

AGENCY: Office of Secretary, DOT.

ACTION: Final rule.

SUMMARY: As required by Federal statute, the Department of Transportation is modifying certain reporting requirements. We are requiring air carriers that file airline service quality performance reports to collect and report the causes of airline

delays and cancellations. Currently, there is a lack of data on the specific causes of airline delays and cancellations. The changes are designed to fill the data gaps in reference to the causes of airline delays and cancellations and to provide this information to the public and other interested parties.

EFFECTIVE DATE: This rule is effective on June 1, 2003.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Clay Moritz, Office of Airline Information, K–14, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387 or 366–4385, respectively. You can also contact them by e-mail at *bernard.stankus@bts.gov* or *clay.moritz@bts.gov* or by fax at (202) 366–3383.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Services at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. You can also view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on ''search.'' On the next page, type the last four digits of the docket number shown in the heading of this document. Then click on ''search.''

Background

Section 227 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires that we modify our airline data collection system, 14 CFR Part 234—Airline Service Quality Performance Reports, to explain more fully to the public the nature and source of airline delays and cancellations (See Pub. L. 106–181, 114 Stat. 61). AIR–21 also directed that DOT establish a Task Force to review airline delays and cancellations and develop recommendations for the associated reporting criteria. Since the passage of AIR–21, Congress has continued to express concern that DOT needs more accurate data to better understand gate, tarmac, and airborne delays. The DOT Office of the Inspector General (OIG) also highlighted the need to examine airline delays and cancellations in its July 25, 2000 report on air carrier flight delays and cancellations. Our own consumer complaint statistics also support regulatory action to reduce airline delays. Also, passengers have expressed frustration when not advised of the cause and length of delays.

In August 2000, we formed the Air Carrier On-Time Reporting Advisory Committee (the Task Force). The Task Force members were chosen to reflect a balanced cross section of interests. In addition to government representatives, they included representatives from consumer airline groups, air carriers, labor unions and airport operators. On September 25, 2000, the Task Force was chartered as a Federal advisory committee. Its mission was to consider changes to the current on-time reporting system so that the public would have clear information about the nature and sources of airline delays and cancellations.

In the Fall of 2000 (*i.e.*, October 25 and 26, November 1 and 2, and November 13), the Task Force held several meetings to identify the issues surrounding airline delays and cancellations and to develop reporting criteria. The meetings were announced in the **Federal Register** (65 FR 63285) and were open to the public. We opened a public docket for the submission of comments, Docket OST–2000–8164. On November 29, 2000, the Task Force submitted its report to DOT. The Task Force made a number of recommendations, including that we establish a reporting framework for collecting information about the causes of airline delays and cancellations. The Task Force also recommended that, prior to rulemaking, we conduct a pilot program to test the proposed reporting categories. Following up on that recommendation, we contacted a number of air carriers; four air carriers agreed to participate in a voluntary pilot project. The four carriers were American Airlines, Delta Air Lines, Southwest Airlines and United Air Lines. Over several months, we met with the four carriers and discussed what causal delay and cancellation information should be collected and how best to report that delay and cancellation data. After the parties agreed on a reporting framework, the carriers began submitting delay and cancellation data to us.

We used the recommendations from the Task Force, the results of our pilot project and our outreach efforts to craft the Notice of Proposed Rulemaking (NPRM) which was published on December 27, 2001 (66 FR 66833). In response to the NPRM, we received 16 comments.

The Proposed Rule

The Department proposed requiring air carriers that file airline service quality performance reports under Part 234 regulations to collect and report the causes of airline delays and cancellations. There was a lack of data on the specific causes of airline delays and cancellations. The Department proposed four delay categories and three cancellation categories as follows:

Delays	Cancellations
Air Carrier	Air Carrier.
Weather	Weather.
National Aviation System.	National Aviation System.
Late Arriving Aircraft	

The proposed changes were designed to fill the data gaps in reference to the causes of airline delays and cancellations and to provide this information to the traveling public and the parties most capable of addressing the causes of the delays and cancellations.

Public Comments

We received comments from America West Airlines, American Trans Air, Southwest Airlines, the Air Transport Association of America (ATA), the Regional Airline Association (RAA), the American Society of Travel Agents (ASTA), the Airports Council International—North America (ACI–NA), the American Automobile Association (AAA), the City of Boston, Save the Bay Association, the San Francisco Boardsailing Association (SFBA), the Paralyzed Veterans of America, Mr. B.E. Wendling, Mr. George Rummell, Ms. Melissa Davis, and Mr. Paul Asmus. The substance of these comments is discussed below under a series of topical captions.

The Continuing Need for Causal Reporting

Southwest Airlines believes that the operating environment since September 11, 2001, negates the need to impose new reporting requirements in the near future.

Mr. Paul D. Asmus believes that modifying the on-time data collection system, to explain more fully to the traveling public the source and nature of airline delays, may create a serious safety problem. Mr. Asmus states that, ''The NPRM as envisioned, plans to add delays for aircraft maintenance in the data that the carriers are required to provide.'' He believes this could lead to mechanics being pressured ''to work faster and cut corners.'' Mr. Asmus requested an Office of the Inspector

General (IG) audit and, while the IG conducts its audit, that the Department place a hold on the rulemaking.

It is only a matter of time before traffic is back to or above the levels of the summers of 2000 and 2001. The Department wants to be pro-active in identifying problem areas and making the necessary improvements to the aviation system to avoid the gridlock which reached a peak in the summer of 2000. For the first eight months of 2001, on-time arrivals increased to 77.4% as compared to 72.7% for the first eight months of 2000. This was accomplished despite an increase of 17,440 flight operations. The improvement was accomplished in a large measure because the FAA made significant progress in correcting problems identified with respect to improving the flow of traffic through seven major airspace choke points in our national airspace system, American and Delta reduced operations at peak times at their hub airports, and Continental and United increased the size of aircraft operated at selected airports. The Department does not want to become complacent in its initiative to reduce air carrier delays. In the Office of the Inspector General's report titled Actions to Enhance Capacity and Reduce Delays and Cancellations (August 17, 2001), the number one item listed as needing attention is the creation of a uniform system for tracking the causes of flight delays and cancellations.

As to the inclusion of flights that are delayed or cancelled for maintenance, the Department has included statistics for such flights beginning in January 1995. While the Department tracked whether the flights experienced delays, the reasons for delays were not identified. The inclusion of all carrier operations in the airline service quality performance data base provides consumers with a more accurate picture of a carrier's overall on-time record. Moreover, we have seen no evidence whatsoever that inclusion of cancellations and delays related to maintenance has in any way diminished safety. To the contrary, there is an incentive for carriers to keep their equipment in top working condition. While the present proposal recommends collection of the causes of delays and cancellations, the proposed cause categories are broad and do not specifically identify maintenance delays or cancellations. As proposed, maintenance delays and cancellations would be reported as ''Air Carrier'' caused delays.

The safety of passengers and crew has always been the most important responsibility of air carriers and the number one priority of the Department. The Department does not believe a delay in the rulemaking is appropriate; however, the Department will investigate any specific allegation that air safety is being compromised and take appropriate action, including enforcement action, where necessary.

In the aftermath of the terrorist attacks of September 11, 2001, large certificated air carriers decreased commercial operations by about 20 percent, as many airlines grounded large numbers of older less efficient aircraft and deferred delivery of new aircraft. As a result of a less congested air transportation system, on-time performance has improved. In March 2002, the FAA held its Annual Commercial Aviation Forecast Conference. During the conference the FAA released The FAA Aerospace Forecasts, Fiscal Years 2002–2013, which estimates that domestic capacity will gradually return to pre-September 11 capacity levels over a 3-year period. At the same time, U.S. regional/commuter air operations continue to grow, albeit at a slower rate than the pre-September 11 growth rate. Thus, although recent on-time performance would not in and of itself indicate need for regulatory action, the Department's statutory mandate, the growing post September 11 airline operations, and our long-range forecasts require regulatory action in this area.

Extending the Reporting Requirements to Other Carrier Groups

We proposed that the requirement to report causes of delays at the present time apply only to the air carriers that are already required to report on-time data under Part 234. These air carriers not only account for the vast majority of domestic operations and enplanements, but they are in a position to quickly adopt the new reporting system, thus minimizing the regulatory burden on the industry and, at the same time, providing valuable information to the public, and to the parties best able to rectify delay problems.

Comments from the ATA, ACI–NA, Save the Bay, SFBA, the City of Boston, and Mr. George Rummell were in favor of extending the reporting requirements to code-share partners of the major carriers, to national air carriers and to large regional air carriers. The RAA is opposed to extending the requirements beyond the current major carriers and believes that American Eagle should be relieved of its current reporting obligation.

SFBA stated that code-share partners of major airlines should begin reporting as soon as practicable. It pointed out that many airports have extensive operations by such code-share carriers and the data from these flights ''would be valuable in assessing the delay problems.'' SFBA stated that although the large certificated air carriers account for 87% of domestic enplanements, they account for a lower percentage of domestic operations. As an example, SFBA pointed to statistics for United Air Lines and its code-share partners at San Francisco-Oakland (SFO) airport for March 4, 1999, stating that while United accounted for 84% of the available seats at SFO, it accounted for only 69% of the operations there. SFBA claims that smaller aircraft ''contribute to delay more than larger aircraft'' because smaller aircraft are slower, require more space to avoid wake turbulence, and serve less passengers. According to SFBA, as a way to minimize reporting burden on code-share partners, reporting could be limited to reportable airports where the code-share operations account for 10% or more of the operations. A reportable airport is an airport that accounts for at least one percent of domestic scheduled enplanements.

The City of Boston believes that excluding from the proposed new causal reporting requirement 17% of passenger enplanements limits the usefulness of the proposed new data. It stated that ''it will be impossible for the DOT to implement well-informed market-based approaches to minimize delays,'' without delay information from the carriers not required to report.

ACI–NA believes that DOT must design a system for tracking the causes of delays that is accurate and complete. The omission of code-share partners and other scheduled air carriers which account for 17% of passengers distorts and undermines the utility of delay data. According to ACI–NA, ''More accurate data will enable smaller and regional carriers to understand their flight delay problems and ultimately help solve those problems. Currently, there is no mechanism that serves this function.''

ATA stated that ''all major, national and code-sharing partners should be included in the Part 234 reporting system,'' and each carrier must be responsible for its own reporting. ATA believes that ''The 17% of enplanements exempt from reporting contribute a disproportionate, higher number of airplanes to the congestion mix since these airplanes generally have fewer seats.'' According to ATA, ''By leaving out this 17%, we may inadvertently deny ourselves the ability to find out the triggering causes of delays, which increase exponentially at congested airports with each added flight, no

matter how small the aircraft.'' ATA cited La Guardia as a good example of an increase in small aircraft operations overwhelming the system.

AAA supports extending the reporting requirements to all air carriers.

Mr. George Rummell believes that the airline industry should report all delays.

The RAA strongly opposes the expansion of the reporting requirements to all medium and large code-sharing regional airlines. It states that regional airlines generally operate routes in the 250 to 500 mile range, which subjects the regional carriers to a high level of ground delays not experienced by major carriers. Regional carriers do not have the technology to easily capture delay data. RAA cites a cost estimate, provided by one of its members, concerning the additional personnel needed to collect and report the data. The estimate places the additional costs at $75,000 per year. RAA further claims that, given the current environment of increased insurance costs and new security fees, the smaller communities served by regional airline may not be capable of absorbing higher air fares which the carriers would need to charge to recover the reporting costs.

The Department realizes that it is a difficult decision to determine the cutoff for which carriers should report on-time data. There were numerous comments that point out the difficulty of making accurate and informed decisions about correcting delay problems when 17% of enplanements and a higher share of operations are omitted. This is compounded by the fact that many of the missing operations are flown by slower moving aircraft. On the other hand, the Department is concerned about adding to the operating cost of small carriers. The Department is attempting to strike a balance between the competing interests. The public interest is best served at this time by applying the new reporting requirements to those airlines that already report on-time data to the Department. Therefore we disagree with RAA's request to relieve American Eagle from the reporting system. American Eagle operated almost 493,000 scheduled domestic passenger flights with almost 12 million domestic enplanements. Relieving American Eagle of its reporting obligation would create a data gap at a time when the Department is looking for economical ways to fill its data needs. American Eagle's data are especially important because American Eagle is the only carrier reporting regional jet operations.

The Department intends to revisit, at a later date, the issue of whether to expand the air carrier universe for on-time reporting. The Department will continue to analyze delay data to see if the reporting burden is too costly for smaller carriers to participate in the data collection. Also, the Department will look at alternative reporting means for less burdensome and costly reporting.

Causal Categories and Methodology

The City of Boston stated that it was unclear from the proposed rule as to which delay category deicing activities should be assigned. It also stated that ''bird strikes'' are associated with individual airports and should be assigned to the National Aviation System (''NAS''). The City of Boston took issue with the following statement in the NPRM:

> Consistent high volume delays are an indication to airport operators and to state and local governments that there is a need for infrastructure investments and improvements.

It believes volume delays can be addressed by actions such as peak-period pricing, auctioning of landing and takeoff rights, or increased use of secondary airports.

American Trans Air believes that ''bird strikes'' are acts of God and should be reported under ''NAS'' delays. The carrier also stated that:

> * * * the National Aviation System category for reporting delays is not adequately defined. There are codes and situations that fall under this category, which are now classified elsewhere or are not specific enough to be meaningful. For example, should not airport delays due to infrastructure, terminal and runway limitations and local and regional curfews fall under NAS? The current allocation of codes, we believe, needs to be less subjective, and include more government-controlled conditions to be labeled as NAS.

ATA believes that ''bird strikes'' should be attributed to NAS. FAR Part 139 requires airports to have a wildlife management program and there are specific air traffic control (ATC) procedures to alerting pilots to bird hazards. ATA also believes that data on late arriving aircraft is not useful. ''Root delay causes for down-line late arriving aircraft cannot be consistently determined when multiple delay causes are involved.''

America West asked, ''What is the difference between extreme and non-extreme weather delays?'' It believes that ''bird strikes'' should be coded as an external delay/cancellation (*e.g.* extreme weather), not as ''Air Carrier'' or ''NAS.'' America West questions the logic of allowing carriers to choose whether or not to report the initial cause of delay for late arriving aircraft delays.

Weather

The Department realizes that reporting the causes of airline delays and cancellations adds subjectivity to the reporting system. There is a fine line between some delays coded as ''Weather'' (extreme weather) and others coded as ''NAS'' (non-extreme weather). The purpose of the assignment of codes is to identify the party or organization which is in the best position to take corrective action. Delays or cancellations coded ''Air Carrier'' are best corrected by the air carriers; delays or cancellations coded ''NAS'' are best corrected by the FAA, airport operators, or State or local governments; and delays or cancellations coded ''Weather'' (extreme weather) cannot be reduced by corrective action. Delays or cancellations coded ''NAS'' are the type of weather delays that could be reduced with corrective action by the airports or the FAA. Therefore, delays attributed to deicing are coded as ''Weather'' delays.

Extreme weather delays or cancellations are caused by weather conditions (*e.g.*, significant meteorological conditions), actual or forecasted at the point of departure, en route, or point of arrival that, in accordance with applicable regulatory standards and/or in the judgment of the air carrier, prevents operation of that flight and/or prevents operations of subsequent flights due to the intended aircraft being out of position as a result of a prior delay or cancellation attributable to weather.

Security Delays

Ms. Melissa Davis believes that, in light of the terrorists attacks of September 11, 2001, airport disruption or security delays should be added to the list of delay or cancellation causes. Ms. Davis cites the evacuation of Hartsfield International Airport on November 16, 2001, as a prime example of the need for security delay reporting.

ATA recommends that a separate delay category be established to report security delays. ATA asserts that security delays are easily identified and these delays should be distinguished from ''NAS'' or ''Air Carrier'' caused delays.

The Department agrees with the commenters that requested a separate category for delays and cancellations that relate to security. We will adopt a new category known as ''Security.'' Congress has assigned responsibility for aviation and other transportation security to the Transportation Security Administration (TSA). One of TSA's primary functions is to provide security screening of passengers and their

accessible property transiting from an airport's common areas to its sterile areas where passengers board their flights. Delays in flight departures are not properly attributable to ''Security'' if they are caused by routine passenger screening. Carriers may or may not elect to delay a flight's departure for such passengers. Flight delays occurring because an air carrier holds a flight for screening are ''Air Carrier'' delays not ''Security'' delays. Not all screening and other security-related delays are attributable to ''Security.'' Some security delays may result from actions of air carriers or airport employees who fail to follow security requirements. Air carriers should take care to ensure that delays and cancellations assigned to the ''Security'' category are not attributable to their own actions or caused by their own employees.

National Aviation System (NAS)

Delays and cancellations attributable to ''NAS'' refer to a broad set of conditions: weather-non extreme, airport operations, heavy traffic volume, air traffic control, etc.

Delays or cancellations resulting from ''bird strikes'' should be coded ''NAS.'' While bird strikes could be viewed as an Act of God, improved wildlife management at airports could reduce the frequency of bird strikes.

While air traffic volume delays and cancellations in the short term are generally the result of over-scheduling by the airline industry, these types of delays and cancellations are coded ''NAS.'' Volume delays occur when there are more flights scheduled than the airport can handle for a given period of time. An individual air carrier's schedule by itself does not create volume delays. Rather, it is the accumulation of all the commercial, general aviation, and military operations at the airport that contribute to the problem. Air carriers schedule flights to meet consumer demand. Volume delays can be reduced in the short term through changes in the air carriers' scheduling practices, which includes using larger equipment, or as the City of Boston suggests, by creating incentives to change consumer preference. Such delays may in the long term be reduced by improving the airport's infrastructure (*e.g.* building runways, improving FAA tower facilities, *etc.*). The airline industry must work together reduce volume delays.

Air carriers only track delays up to ''push back from the gate.'' These delays are departure delays. After push back, the aircraft is under air traffic control. Delays occurring after departure are assigned by air carriers to the NAS. Therefore, whenever the arrival delay is greater than the departure delay, the air carriers apportion NAS minutes to make up the difference between the departure delay and the arrival delay (Departure delay + NAS delay = Arrival delay).

Whenever the departure delay is more than the arrival delay, the en route time savings would be prorated back to the departure delay categories. For example, if a 50 minute departure delay consists of a 15 minute ''Air Carrier'' delay, a 10 minute ''NAS'' delay, and a 25 minute ''Late Arriving Aircraft,'' then the departure delay would be 30% ''Air Carrier,'' 20% ''NAS'' and 50% ''Late Arriving Aircraft''. If the flight arrived 40 minutes late, this would be reported in minutes as 12 minutes ''Air Carrier,'' 8 minutes ''NAS'' and 20 minutes ''Late Arriving Aircraft.''

Using the available internal data, the FAA will review the delays reported by the air carriers in the ''NAS'' category to identify the actual causes of the delays. Air carriers track delays up to the time the aircraft pushes away from the departure gate. Delays that occur after ''push-back'' are generally assigned to the ''NAS'' category. The FAA has various data sets that can be used to identify delays after ''push-back.'' One of these is FAA's Air Traffic Operations Network (OPSNET) information. This data set provides information on delays incurred by aircraft while under the control of the air traffic system.

In addition, the National Oceanic and Atmospheric Administration provides the FAA with weather information. Airport operators provide the FAA with information on runway closures and other airport incidents. With these data sets, the FAA has the capability to refine the NAS delays into weather-non extreme, volume, equipment outages, runway closures, other, or ''no match.''

Carrier Delays

The Paralyzed Veterans of America requested that the Department remove the specific reference to ''handling disabled passengers'' from the guidance list of ''Air Carrier'' delays.

The Department concurs with the request of The Paralyzed Veterans of America to remove the specific reference to ''handling disabled passengers'' from the guidance list of ''Air Carrier'' delays. Slow boarding or seating covers all passengers and there is no intent to focus on an individual group. Delays attributed to slow boarding are coded as ''Air Carrier.''

The Department disagrees with the proposal to attribute to ''NAS'' a delay caused by an air carrier observing an airport curfew. Curfews are in place at many airports and air carriers must plan their schedules taking into account these curfews. If a delay or cancellation is the result of an airport curfew, the delay is an ''Air Carrier'' delay.

Delays caused by positive passenger/baggage matches are coded ''Air Carrier'' when the air carrier is responsible for conducting the match. Air carriers are responsible for advising passengers of the time needed for pre-boarding clearances and security screening. If delays are caused by inoperative security equipment or if the government institutes a security action which delays flights, then the delays will be coded as ''Security.''

Delays Attributed to Late Arriving Aircraft

Consumers have an interest in knowing if particular flights are consistently late due to late arriving aircraft. Delays reported under the ''Late Arriving Aircraft'' category demonstrate the ripple effects of an earlier flight delay problem. The cause of the initial delay must be addressed to cure the delays associated with late-arriving aircraft. Some carriers track the initial causes and use an internal code to identify the initial cause for downline late arriving aircraft. Other carriers do not track the downline effects of earlier delays and only record that the flight was late because of the previous flight's late ''turn around.'' While data that identify the initial causes of downline delays are useful data, they are not critical. Originally, we proposed in the NPRM to create a two-tier system where carriers had the option to report the root cause of late arriving aircraft delays. We agree with ATA that this two-tier reporting system could be confusing to data users and not produce the desired results. Therefore, in such cases we have decided to require that carriers report only that the delay was the result of a ''late arriving aircraft'' and not report the initial delay cause. The Department will have the ability to track the ripple effects of downline delays since carriers report the aircraft tail number, which will enable the Department to follow an aircraft through its daily flight schedule.

Thus, based on our review of the public comments, we are adopting the following reporting codes:

Cancellation Codes

(A) Air Carrier;
(B) Extreme Weather;
(C) National Aviation System (NAS); and
(D) Security.

Delay Causes

Air Carrier;

Extreme Weather;
National Aviation System (NAS);
Security; and
Late Arriving Aircraft.

Delay and Cancellations Causes

Below is a list of examples of causes for delays and cancellations. This list should be used as a guide for relating the types of occurrences and the associated delay or cancellation code. This list should not be considered a complete list. Carriers report delay categories when the arrival delay is 15 minutes or more. The rule does not require carriers to report causal data for flights that are considered ''on-time.''

Air Carrier

Aircraft cleaning
Aircraft damage (except bird strikes, lightning/hail damage)
Airport curfew
Awaiting the arrival of connecting passengers or crew
Awaiting alcohol test
Awaiting gate space
Baggage loading
Cabin servicing
Cargo loading
Catering
Computer outage—carrier equipment
Crew legality (pilot or attendant rest)
Damage by hazardous goods
Engineering Inspection
Flight paperwork
Fueling
Gate congestion
Government forms not properly completed—INS, FAA, Agriculture, Public Health, etc.
Ground equipment out of service
Hot brakes restriction
Last minute passenger
Late mail from Post Office
Late crew
Lavatory servicing
Maintenance
Medical emergency
Out of service aircraft
Oversales
Positive passenger baggage match
Passenger services
Potable water servicing
Pre-flight check
Ramp congestion—blocked by another aircraft under carrier's control
Ramp service
Removal of unruly passenger
Revised weight sheet
Shortage of ramp equipment
Slow boarding or seating
Snow removal (when it is a carrier ramp service function)
Stowing carry-on baggage
Weight and balance delays

Weather

Below minimum conditions
Clear ice inspection
Deicing aircraft
Earthquake
Extreme high or low temperatures
Hail Damage
Holding at gate for enroute weather
Hurricane
Lightning damage
Pre-planned cancellations that result from predicted weather
Snow Storm
Thunder Storm
Tornado

National Aviation System (NAS)

Airport conditions
Airport construction
Air Traffic Control (ATC)
Awaiting ATC clearance while still at gate
Air Traffic Quota Flow Program—ATC
Closed Runways
Computer failure—air carrier equipment
Equipment Outage—ATC
Gate hold—ATC
Ground delay program—ATC
Flow control program—FAA
Other disabled aircraft blocking runway
Ramp congestion—blocked by aircraft not under carrier's control
Ramp Traffic—Air Traffic Control
Restricted aircraft movement on runways
Volume Delays

Security

Bomb threat
Inoperative screening equipment
Evacuation of terminal or concourse or re-boarding aircraft resulting from security breech
Weapon confiscation

Late Arriving Aircraft

Means a previous flight with same aircraft arrived late which caused the present flight to depart late.

Passenger Notification

Several commenters stated that they support the rule to collect causal data, but more should be done to require passenger notification and to relieve passenger inconvenience at the time of the delay or cancellation. Mr. Rummell states that a passenger should receive compensation, similar to denied boarding compensation, when an air carrier's delayed flight causes a passenger to miss a connecting flight.

The Department agrees that air carriers should make their best efforts to alert passengers as early as possible of delays, the reason for the delay, and the actions the carrier is taking to deal with the problem. The instant rulemaking is focused on collecting data that can be used by consumers in making future travel plans and by the operators and managers of the air transportation system for strategic planning to decrease the frequency and severity of flight irregularities. Thus, these proposals suggesting notification requirements in the event of delays or cancellations as well as the proposal for compensation are outside the scope of this rulemaking.

Standardizing Flight Times

ACI–NA states that the current system does not take into account the common practice by air carriers of increasing flight times in their schedules to avoid the appearance of frequent delays. According to ACI–NA system inefficiencies are masked when carriers' flights are counted as ''on-time'' only because the air carriers padded their schedules. ACI-NA believes that, ''DOT's establishment of a more uniform delay reporting system would go a long way towards rectifying these problems, but will only do so if most or all air carriers are required to comply.''

We agree that the current reporting system has the capacity to conceal inefficiencies in the aviation system. However, we also believe that airlines are acting responsibly and in the best interests of the public in adjusting their schedules to reflect actual departure and arrival times. It is more important for the public to be able to rely on the stated time that their flight actually will arrive at its destination, than it is for them to know the time the flight would arrive if there were no inefficiencies in the system. Generally, carriers schedule their flight times based on the unimpeded taxi-out time, the unimpeded air time, the unimpeded taxi-in time, and the time of all anticipated delays. For example, if each morning an air carrier's flight experiences a 20 minute wait in a queue for take-off clearance, the air carrier will incorporate those 20 minutes into its flight schedule. Flights are late when the carrier experiences an unanticipated delay. If events causing delays occur regularly, these events are built into a carrier's schedule, which precludes the public from otherwise being deceived and permits the public to rely on the carrier's stated schedule.

The Department's Inspector General audited some flights at certain heavily used airports and found that scheduled flight times have increased in duration over time. The increase in scheduled flight time is related to the rise in operations in the aviation system. Generally, an increase in the volume of operations at an airport means an increase in taxi-out times. This is especially true during peak operating periods. Rather than creating a more ''uniform'' system for carriers to report

their scheduled times, the Department has plans to develop an efficiency index for routes and airports. The route index would be based on the sum of the unimpeded taxi-out time, the unimpeded air time, the unimpeded taxi-in time divided into the scheduled times. The airport index would be an average of all route indices originating at the airport. High indices would represent an inefficiency on the route or at the airport. Accordingly, we do not find it in the public interest to adopt ACI–NA's suggestion to alter the way on-time flights are calculated.

Airline Service Quality Performance Data vs. Operations Network Data

ACI–NA states that, ''The current system for reporting flight delays and cancellations is deeply flawed because of inconsistencies between the Airline Service Quality Performance (ASQP) data reported by the airlines to the BTS and the delay data collected by FAA personnel from manually recording aircraft via the FAA's Operations Network (''OPSNET'' data). The OPSNET data are intended to measure system-wide ATC performance and to identify areas for ATC operational improvement.''

The Department does not believe the reporting systems are flawed because ASQP and OPSNET reports have different delay results. As ACI–NA correctly points out, OPSNET measures how well the ATC system is performing. If a flight cannot lift-off within 15 minutes after departing the boarding gate, OPSNET records a departure delay because the ATC system did not service that aircraft in a timely manner. Conversely, ASQP measures how well the air carriers are meeting their published schedules. The most important delay statistic of ASQP is the percentage of scheduled on-time arrivals. As stated earlier, if an air carrier's flight routinely experiences a 20 minute wait in a departure queue, the carrier will add those 20 minutes into its flight schedule. That flight will probably have a consistent OPSNET delay and an on-time ASQP arrival. The largest discrepancies between OPSNET and ASQP occur when there are long ATC delays in the early morning. In these cases, both systems record delays for the initial morning flights. ASQP will continue to record delayed flights until the air carriers are able to meet their published schedules. OPSNET, on the other hand, would not record another delay unless there was another ATC problem.

The Department does not view different statistics from OPSNET and ASQP as flawed data. However, the public can be confused when the media uses OPSNET and ASQP data interchangeably without explaining the differences in the two systems. We believe that the proper source to advise the public of air carrier on-time performance is the ASQP data. OPSNET data are the proper data source for analyzing ATC delays. However, once causal data are included in the ASQP system, it should become the primary source for all delay studies.

Publication of Causal Data

The ATA believes air carrier causal data are proprietary and confidential and should only be released to the public in an aggregate form and that no individual carrier causal data should be publicly released. ATA also believes that the Department should not release the ''refined'' NAS data until the Department and airlines have had ample time to evaluate its utility for this purpose. In the NPRM, the Department stated that it would use OPSNET data and information from the National Oceanic and Atmospheric Administration to identify the actual causes of delays reported in the ''NAS'' category.

Given the existing reporting requirements in this area, ATA has failed to demonstrate why causal data should be viewed as proprietary data. Indeed, Congress and the Department have made the determination that overriding public interest calls for release of the data. Moreover, the causal category ''Air Carrier'' is inclusive of all types of delays under the control of the carrier. This level of summarization does not allow a competitor air carrier to gain a competitive advantage by studying another carrier's reported ''Air Carrier'' delays. For example, you could not gain insight as to a carrier's policy of holding a flight for delayed connecting passengers from delays coded ''Air Carrier.''

The Department also disagrees with the suggestion that the FAA should not identify the delays coded ''NAS.'' It is important for management purposes for the FAA to identify the specific cause of ''NAS'' delays. The FAA has had ample experience using OPSNET data to identify ATC, airport, and weather related delays. The Department realizes that there will be some ''NAS'' delays which it will not be able to match with its internal data. For example, there probably will not be internal FAA data to identify delays or cancellations caused by bird strikes. From the information gathered by the Air Carrier On-Time Reporting Advisory Committee and our experience with the follow-on pilot program on causal reporting, it appears air carriers presently lack the necessary information to code those flight delays which occur after the aircraft pushes back from the departure gate. Because of this, air carriers code all delays after push back as ''NAS'' delays. Since air carriers lack the causal knowledge of delays after push back, we believe the FAA is the proper party to identify ''NAS'' delays. Moreover, if ''NAS'' delays were not identified, the public may be left with the perception that all ''NAS'' delays are solely ATC delays, which is not accurate.

Diverted Flights

We have concluded that air carriers should not report causal codes for diverted flights. Air carriers track and code delays only up to the time the aircraft pushes back from the gate at the origin airport. Carriers are instructed to code delays after push back as ''NAS'' delays because, after push back, the aircraft is generally under the command of the air traffic control system. Most diversions are caused by extreme weather conditions or mechanical malfunctions. There are only a minimal number of diverted flights and most diversions would be mis-coded if carriers followed the reporting instructions to code in-flight delays as ''NAS'' delays.

The Five Minute Rule

In the interest of keeping the reporting burden to a minimum, carriers will be required only to track delay causes of five minutes or more, however carriers may elect to track delays by the minute. Regardless of the method chosen, a carrier must ensure that, in all cases, the total minutes of the reported causal delays equal the actual minutes of arrival delays. For instructions, see examples 2, 3, 8, and 11 under the caption ''Examples of delayed flight coding.''

Reporting of Delayed Flights

Carriers use a fixed-length file format to report on-time data. We have added four-position numeric fields for each of the five possible causes of delays. Instead of reporting delay codes, carriers will report the number of minutes attributed to the cause of delay into the assigned fields for the appropriate cause of delay. There often are multiple reasons for delayed flights, and we are requiring air carriers to report each category of flight delay, as applicable. The Department has adopted the fixed-length file format as follows:

FIELD SPECIFICATIONS FOR FORM 234, ON-TIME PERFORMANCE REPORTS

Field and description	Type	Location	Length	Comments
A—Carrier code	Alpha	1–2	2	
B—Flight number	Num	3–6	4	
C—Origin airport code	Alpha	7–9	3	
D—Destination airport code	Alpha	10–12	3	
E—Date of flight operation	Num	13–20	8	Format yyyymmdd.
F—Day of the week of flight operation	Num	21	1	Mon = 1, Sun = 7.
G—Scheduled departure time per OAG	Num	22–25	4	Local time 24 hour clock.
H—Scheduled departure time per CRS	Num	26–29	4	Local time 24 hour clock.
I—Gate departure time (actual)	Num	30–33	4	Local time 24 hour clock.
J—Scheduled arrival time per OAG	Num	34–37	4	Local time 24 hour clock.
K—Scheduled arrival time per CRS	Num	38–41	4	Local time 24 hour clock.
L—Gate arrival time (actual)	Num	42–45	4	Local time 24 hour clock.
M—Difference between OAG and CRS scheduled departure times.	Num	46–49	4	In minutes (2 hrs = 0120 min).
N—Difference between OAG and CRS scheduled arrival times.	Num	50–53	4	In minutes.
O—Scheduled elapsed time per CRS	Num	54–57	4	In minutes.
P—Actual gate-to-gate time	Num	58–61	4	In minutes.
Q—Departure delay time (actual minutes CRS)	Num	62–65	4	In minutes.
R—Arrival delay time (actual minutes CRS)	Num	66–69	4	In minutes.
S—Elapsed time difference (actual minutes CRS)	Num	70–73	4	In minutes.
T—Wheels-off time (actual)	Num	74–77	4	Local time 24 hour clock.
U—Wheels-on time (actual)	Num	78–81	4	Local time 24 hour clock.
V—Aircraft tail number	Alpha/Num	82–87	6	Left justified, trailing blanks.
W—Cancellation code	Num	88	1	(A, B, C, or D).
X—Minutes late for delay	Num	89–92	4	Carrier Caused Delays—In minutes.
Y—Minutes late for delay	Num	93–96	4	Extreme Weather Delays—In minutes.
Z—Minutes late for delay	Num	97–100	4	NAS Delays—In minutes.
AA—Minutes late for delay	Num	101–104	4	Security—In minutes.
AB—Minutes late for delay	Num	105–108	4	Late Arriving Aircraft—In Minutes.

Cancellation codes	Delay causes
A—Carrier Caused	Carrier Caused.
B—Extreme Weather	Extreme Weather.
C—National Aviation System.	National Aviation System.
D—Security	Security.
	Late Arriving Aircraft.

All numeric fields for which data are unavailable will be zero-filled.

All alpha fields for which data are unavailable will be left blank.

The data fields in this document are Y2K compliant.

Examples of delayed flight coding: 1. A flight received a 20 minute ground hold because of congestion at the destination airport, and the flight was 18 minutes late arriving at the destination airport gate. The delayed flight would be coded 18 minutes for NAS.

2. A flight was 4 minutes late pushing back from the gate and arrived 21 minutes late. The delayed flight would be coded 21 minutes for NAS. Please note in this example that the air carrier delay was less than 5 minutes, and thus unless the carrier tracks delays by the minute, the 4 minute push-back delay would not be attributed to the air carrier.

3. A flight was delayed 4 minutes due to slow boarding of passengers and another 3 minutes to load late-arriving baggage. The flight arrived 15 minutes late. The delayed flight would be coded 7 minutes for air carrier and 8 minutes for NAS. Please note in this example that while no single air carrier caused delay was 5 minutes or more, the sum of the carrier delay was more than 5 minutes and the total delay was 15 minutes, and thus, reportable.

4. A flight was delayed 20 minutes waiting for connecting passengers from another flight and arrived 28 minutes late. The delayed flight would be coded 20 minutes for air carrier and 8 minutes for NAS.

5. A flight had a 16 minute ground hold and arrived 14 minutes late. There is no delay coding as the flight arrived within 15 minutes of scheduled arrival time, and thus, is considered on-time.

6. A flight is 20 minutes late because of weather and is coded 20 minutes for weather. The next flight with that aircraft is 15 minutes late leaving the gate and arrives 20 minutes late. The delayed flight would be coded 15 minutes for late arriving aircraft and 5 minutes NAS. Please note in this example that the air carrier made up 5 minutes of the initial late arriving aircraft delay, but then experienced a 5 minute en-route delay.

7. A flight was 30 minutes late pushing back from the gate. The 30 minute delay consisted of 10 minutes for a late arriving aircraft and 20 minutes for slow boarding process because of an oversales problem. The flight arrived 24 minutes late. The delayed flight would be coded 8 minutes for late arriving flight and 16 minutes for air carrier. Please note in this example that the 6 minutes gained after push back was prorated back to the two recorded delays. In this example, late arriving aircraft was 33.3% of the original delay and the air carrier delay was 66.6% of the delay. Therefore, late arriving aircraft was computed as 33.3% of 24 which equals 8; and air carrier was computed as 66.6% of 24 which equals 16.

8. A flight was 20 minutes late because of a thunderstorm and 6 minutes late because of a crew problem. The flight arrived 18 minutes late. The delayed flight would be coded 14 minutes for weather and 4 minutes for air carrier. In this example, the air carrier must round the prorated minutes to whole numbers. Carriers should not report fractions or decimals. Also, the

carrier would report an air carrier delay of less than 5 minutes because the carrier was required to track the crew delay because it was 5 minutes or more.

9. Flight number 234 was 20 minutes late departing the gate because the air carrier substituted a spare aircraft to reduce a known upcoming delay. The flight was scheduled to be operated with an aircraft that, at the time, was experiencing a 3 hour extreme weather delay. Flight number 234 arrived 16 minutes late, and was reported as a 16 minute late arriving aircraft—extreme weather.

10. A flight was 2 hours late because the carrier's concourse was evacuated and passengers re-screened because of a breech of security. The flight would be coded 120 minutes—Security.

11. A flight was 3 minutes late because of late crew and 4 minutes late because of severe weather. The flight arrived 19 minutes late. Since the flight was 7 minutes late departing the gate, the carrier could report the delay as 7 minutes ''Weather'' (the predominant cause of the gate delay of over five minutes) and a ''NAS'' delay of 12 minutes. Also, acceptable would be 3 minutes ''Air Carrier,'' 4 minutes ''Weather'' and 12 minutes ''NAS.''

Examples of cancelled flight coding:

1. A flight cancelled because of mechanical problems is coded ''A'' for air carrier.

2. Flight 123, BOS–DCA was cancelled because, overnight, the airport had two feet of snow. The cancellation would be coded ''B'' for weather.

3. The next segment of Flight 123, DCA–MIA was cancelled because the aircraft that was to be used for this flight is stuck in two feet of snow in Boston. The weather in Washington and Miami is clear. The cancellation would be coded ''B'' for weather, because the intended aircraft was out of position as a result of a prior cancellation attributed to weather.

4. It's a clear day at O'Hare, but there is a ground hold for flights to DFW because of a severe thunderstorm around the DFW airport. After a 3 hour wait, the weather at DFW has not changed, and the carrier cancels the flight. The cancellation would be coded ''B'' for weather.

5. It's a rainy, misty day at O'Hare. Operations have been slow all morning. The air carrier receives a call from air traffic control asking that it cancel one of its next five flights to allow the airport to return to normal operations. Other carriers receive similar calls. These cancellations would be coded ''C'' for NAS.

6. The airport is closed for two hours because of a breech in security. The carrier cancelled three flights because the number of scheduled departures exceeded airport capacity; and the FAA advised all air carriers that they must reduce the remainder of their daily schedule. The cancellation would be coded AD'' for Security.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is ''significant'' under Executive Order 12866 and the regulatory policies and procedures of the Department of Transportation (44 FR 11034), and was reviewed by the Office of Management and Budget. As discussed above, the purpose of the rule is to disclose more fully to the public and aviation managers the nature and source of the delays and cancellations experienced by air travelers. This objective is achieved by amending 14 CFR 234 to require reporting air carriers to identify and report causes of airline delays and cancellations. Based on information collected during the pilot project, we estimate that the new reporting requirements would require each reporting carrier to expend 10–20 hours to reconfigure its data system. Once these initial resources are expended, we estimate that there will be no additional costs or burdens for delay and cancellation reporting. We estimated reprogramming costs of $100.00/hour. Thus, we estimate that for the 10 reporting air carriers in total, there would be an initial reprogramming cost of $10,000—$20,000.

Prior to the issuance of the NPRM, the Air Carrier Association of America stated that the start-up costs for air carriers not presently reporting under Part 234 would be approximately $25,000, with annual costs as high as $100,000. The Air Carrier Association of America did not submit a comment in response to the NPRM. American Trans Air estimated its initial programming costs at $136,000 and an annual cost of $100,000 ''to report on-time performance as well as causal data.'' The ATA stated that it would be ''inappropriate'' for it to estimate the costs to its members because ''on-time flight performance reporting is the responsibility of each certificated carrier.''

This final rule applies only to carriers reporting under Part 234 and, while American Trans Air submitted cost estimates, it has not reached the Part 234 reporting threshold at this time and thus, is not covered by the requirements of this rule. Thus, none of the air carriers covered by this final rule face development costs since they are already reporting under Part 234. None of the carriers, presently reporting under Part 234, indicated that the annual costs for reporting the causes of delays and cancellations would be $100,000 or more. A carrier whose business expands to such a point that it meets the Part 234 reporting requirements, must develop a computer system to file its quality performance reports of which the casual delay information would be a minor part of the overall development costs.

Finally, even using slightly higher cost estimates ($25,000–$50,000), we believe that the benefits to the traveling public and the availability of more accurate information for the allocation of transportation resources outweigh the modest costs that would be incurred by the reporting air carriers.

Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism'') and we have determined the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review its regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of ''small business'' has the same meaning as under the Small Business Act (15 CFR parts 631–657c). For those companies providing scheduled passenger air transportation, the SBA defines a small business as an air carrier that has 1,500 employees or fewer (See NAICS Number 48111).

The rule applies only to those air carriers that meet the Part 234 reporting criteria (*i.e.*, carriers that hold a certificate under 49 U.S.C. 41102 and account for at least 1 percent of the domestic scheduled-passenger revenues in the past 12 months). We have reviewed our data base and find that none of the air carriers that report under Part 234 have 1,500 employees or fewer. In fact, our information indicates that all of these carriers employ more than 10,000 employees. Therefore, we believe that this rule does not apply to any ''small business'' as defined by the SBA. Thus, based on the above discussion, I certify this rule will not have a

significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector.

Environmental Assessment

We believe that the changes to the Part 234 reporting system have no significant impact on the environment. The changes proposed in this final rule should increase the quality of data collected on the causes of airline delays and cancellations, thus increasing our ability to evaluate potential air traffic problems and allocate the appropriate resources toward mitigating these problems. These revisions should produce a small net benefit to the environment by improving the data sources used in regulatory development. Therefore, we find that there are no significant environmental impacts associated with this rule.

Paperwork Reduction Act Analysis

The reporting and record keeping requirements associated with this final rule are being sent to the Office of Management and Budget in accordance with 44 U.S.C. Chapter 35 under OMB NO: 2138–0040. *Administration*: Bureau of Transportation Statistics; *Title*: Airline Service Quality Performance Reports; *Need for Information*: Statistical information on the causes of airline delays and cancellations; *Proposed Use of Information*: To disclose more fully to the public the nature and source of the delays and cancellations experienced by air travelers; *Frequency*: Monthly; *Burden Estimate*: 150 hours; *Average Annual Burden Hours per Respondent After Final Rule is Issued*—No burden. Based on information collected during the pilot project, we estimate that these reporting requirements will require each affected carrier to expend 10–20 hours to reconfigure its data system. We estimate reprogramming costs of $100.00/hour. Thus, we estimate that for the 10 reporting air carriers in total, there would be an initial reprogramming cost of $10,000–$20,000. Once these initial resources are expended, we estimate that there would be no additional annual burden. We invite comments on our burden estimates. For further information or to comment on the burden hour estimate contact: The Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention Desk Office for the Department of Transportation or Bernie Stankus at the address listed under **FOR FURTHER INFORMATION CONTACT.**

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2139–AA09 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Regulatory Text

Accordingly, the Bureau of Transportation Statistics, under delegated authority pursuant to 49 CFR part 1, amends Chapter II of 14 CFR, as follows:

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

PART 234—[AMENDED]

1. The authority citation for Part 234 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401, 413, 417.

2. Section 234.4 is amended by adding paragraphs (a)(16) through (a)(21), revising paragraph (b), and adding paragraph (g), (h) and (i) as follows:

§ 234.4 Reporting of on-time performance.

(a) * * *

(16) Causal code for cancellation, if any.

(17) Minutes of delay attributed to the air carrier, if any.

(18) Minutes of delay attributed to extreme weather, if any.

(19) Minutes of delay attributed to the national aviation system, if any.

(20) Minutes of delay attributed to security, if any.

(21) Minutes of delay attributed to a previous late arriving aircraft, if any.

(b) When reporting the information specified in paragraph (a) of this section for a diverted flight, a reporting carrier shall use the original scheduled flight number and the original scheduled origin and destination airport codes. Carriers are not required to report causal information for diverted flights.

* * * * *

(g) Reporting carriers should use the following codes to identify causes for cancelled flights:

Code
A—Air Carrier
B—Extreme Weather
C—National Aviation System (NAS).
D-Security

(1) Air Carrier cancellations are due to circumstances that were within the control of the air carrier (*e.g.*, lack of flight crew, maintenance, etc.).

(2) Extreme weather cancellations are caused by weather conditions (*e.g.*, significant meteorological conditions), actual or forecasted at the point of departure, en route, or point of arrival that, in accordance with applicable regulatory standards and/or in the judgment of the air carrier, prevents operation of that flight and/or prevents operations of subsequent flights due to the intended aircraft being out of position as a result of a prior cancellation or delay attributable to weather.

(3) NAS cancellations are caused by circumstances within the National Aviation System. This term is used to refer to a broad set of conditions: weather-non-extreme, airport operations, heavy traffic volume, air traffic control, etc.

(4) Security cancellations may be the result of malfunctioning screening or other security equipment or a breech of security that causes the evacuation of the airport or individual concourses, or the need to re-screen passengers.

(h) Reporting carriers should use the following causes to identify the reasons for delayed flights:

CAUSE
Air Carrier
Extreme weather
NAS
Security
Late arriving aircraft

(1) Air carrier delays are due to circumstances within the control of the air carrier.

(2) Extreme weather delays are caused by weather conditions (*e.g.*, significant meteorological conditions, actual or forecasted at the point of departure, en route, or point of arrival that, in accordance with applicable regulatory standards and/or in the judgment of the air carrier, prevents operation of that flight and/or prevents operations of subsequent flights due to the intended aircraft being out of position as a result of a prior cancellation or delay attributable to weather.

(3) NAS delays are caused by circumstances within the National Aviation System. This term is used to refer to a broad set of conditions: weather-non-extreme, airport operations, heavy traffic volume, air traffic control, etc.

(4) Security delays may be the result of malfunctioning screening or other security equipment or a breech of security that causes the evacuation of the airport or individual concourses or the need to re-screen passengers.

(5) Late arriving aircraft delays are the result of a late incoming aircraft from the previous flight.

(i) When reporting causal codes in paragraph (a) of this section, reporting carriers are required to code delays only when the arrival delay is 15 minutes or greater; and reporting carriers must report each causal component of the reportable delay when the causal component is 5 minutes or greater.

3. Section 234.5 is revised as follows:

§ 234.5 Form of reports.

Except where otherwise noted, all reports required by this part shall be filed within 15 days of the end of the month for which data are reported. The reports must be submitted to the Office of Airline Information in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Assistant Director for Airline Information.

Issued in Washington, DC on November 15, 2002.

Rick Kowalewski,

Acting Director, Bureau of Transportation Statistics.

[FR Doc. 02–29910 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 738, 746, 758 and 774

[Docket No. 021009232–2232–01]

RIN 0694–AC57

Exports and Reexports to the Federal Republic of Yugoslavia: Lifting of UN Arms Embargo-Based Controls; Clarification of UN Arms Embargo-Based Controls on Rwanda

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by removing the special controls on the export and reexport of arms-related items imposed on July 14, 1998 on the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY). Consequently, arms embargo-based licensing requirements for exports and reexports of certain items subject to the EAR (*e.g.*, water cannon) to the FRY are removed, and a case-by-case license review policy is reinstated for the export and reexport of items controlled for regional stability and crime control reasons. This rule is consistent with United Nations Security Council (UNSC) Resolution 1367 of September 10, 2001, which terminated the international arms embargo against the FRY mandated by UNSC Resolution 1160 of March 3, 1998. This rule also makes a minor clarification to the arms embargo-based controls in place with respect to Rwanda pursuant to UNSC Resolution 918 of May 17, 1994.

DATES: This rule is effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, Telephone (202) 482–0171, e-mail *jroberts@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Consistent with United Nations Security Council (UNSC) Resolution 1160 of March 3, 1998, the Bureau of Industry and Security (BIS), formerly the Bureau of Export Administration (BXA), imposed new controls on the export and reexport of arms-related items subject to the EAR to the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY). UNSC Resolution 1160 mandated an embargo on the sale or supply of arms and arms-related matériel to the FRY. On July 14, 1998, BIS issued a rule consistent with the UNSC embargo against the FRY, applying a policy of denial on the export and reexport of items controlled for crime control and regional stability reasons and making additional items subject to control (*e.g,* certain shotgun shells, military helmets, water cannon and certain civil aircraft). BIS placed the specific provisions that implemented the embargo in section 746.9 of the EAR.

On September 10, 2001, in Resolution 1367, the UNSC terminated the international arms embargo against the FRY. Consistent with UNSC Resolution 1367, this rule removes the provisions in section 746.9 of the EAR that implemented the arms embargo against the FRY. With the publication of this rule, BIS is removing the UN arms embargo-based license requirements for the export and reexport of items controlled under Export Classification Control Numbers (ECCNs) 0A018, 0A984, 0A985, 0A986, 0A987, 0A988, 0B986, 0E018, 0E984, 1A005, 1B018, 1C018, 1C992 1D018, 2A993, 2B018, 2D018, 2E018, 6A002, 6A003, 6A018, 6E001, 6E002, 8A018, 9A018, 9A991, 9D018, 9E018 to the FRY. BIS is removing altogether ECCN 0A989, water cannon and specially designed components for water cannon, because it was a UN arms embargo-based control applying solely to the FRY. BIS also is reinstating a case-by-case licensing policy for the export and reexport of these items controlled for crime control or regional stability reasons destined to the FRY.

This rule also adds a new note number 4 in the License Exception sections of entries for ''Technology'' controlled by ECCNs 6E001 and 6E002, making License Exception Technology and Software under Restriction (TSR) unavailable for exports or reexports of 6E001 and 6E002 ''Technology'' to Rwanda, which is still subject to a UN arms embargo pursuant to UNSC Resolution 918 of May 17, 1994. With respect to Rwanda, ''Technology'' controlled by ECCN 6E001 is for the ''development'' of equipment, materials or ''software'' controlled by Category 6A002 or 6A003, and ''Technology'' controlled by ECCN 6E002 is for the ''production'' of equipment or materials controlled by 6A002 or 6A003. The license requirements for Rwanda are set forth in section 746.8 of the EAR.

Finally, this rule makes changes to sections 732.3 and 758.1 of the EAR to reflect the removal of the UN arms embargo-based controls against the FRY and removes Supplement 2 to part 746 describing international arms embargoes administered by the Department of State. For information on such embargoes, exporters are advised to consult with the Department of State, Office of Defense Trade Controls.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections have been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BIS–748P. Send comments regarding these burden

estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 732

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 758

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping, requirements.

15 CFR Part 774

Exports, Foreign Trade.

Accordingly, parts 732, 738, 746, 758 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 732—[AMENDED]

1. The authority citation for part 732 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

§ 732.3 [Amended]

2. Section 732.3 is amended:

a. By revising the phrase ''For Angola, Bosnia-Herzegovina, Croatia, Rwanda, and Serbia and Montenegro'' in paragraph (d)(4) to read ''For Angola and Rwanda''; and

b. By revising the phrase ''If your destination for any item is Bosnia-Herzegovina, Croatia, Cuba, Iran, Iraq, Libya, Rwanda, or Serbia and Montenegro you must consider the requirements of part 746 of the EAR.'' in introductory text in paragraph (i) to read ''If your destination for any item is Cuba, Iran, Iraq, Libya or Rwanda you must consider the requirements of parts 742 and 746 of the EAR.''

PART 738—[AMENDED]

3. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Publ. L. 106–387; Sec. 221, Publ. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

4. Supplement No. 1 to Part 738 is amended by removing the footnote notation ''1'' from the entry ''Yugoslavia (Serbia and Montenegro), Federal Republic of''.

PART 746—[AMENDED]

5. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; Sec. 901–911, Publ. L. 106–387; Sec. 221, Publ. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

§ 746.1 [Amended]

6. Section 746.1 is amended by removing paragraphs (e) and (f).

§ 746.9 [Removed]

7. Section 746.9 is removed and reserved.

8. Supplement No. 2 to Part 746 is removed and reserved.

PART 758—[AMENDED]

9. The authority citation for part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

§ 758.1 [Amended]

10. Section 758.1 is amended by revising the phrase ''For all exports of items subject to the EAR that are destined to Cuba, Iran, Iraq, Libya, North Korea, Serbia (except Kosovo), Sudan, or Syria,'' in paragraph (b)(1) to read ''For all exports of items subject to the EAR that are destined to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria,''.

* * * * *

PART 774—[AMENDED]

11. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2002, 67 FR 53721, August 16, 2002.

12. In Category 0—Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items], the following Export Classification Numbers (ECCN's) are amended:

a. By revising the ''License Requirements'' section and the ''License Exceptions'' section for ECCNs 0A018 and 0E018;

b. By revising the ''License Requirements'' section for ECCNs 0A984, 0A985, 0A986, 0A987, 0A988, 0B986, and 0E984; and

c. By removing ECCN 0A989, to read as follows:

0A018 Items on the International Munitions List.

License Requirements

Reason for Control: NS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $5000 for 0A018.a and .b, $3000 for 0A018.c, $1500 for 0A018.d through .f, $0 for Rwanda
GBS: N/A
CIV: N/A

* * * * *

0A984 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, FC, UN.

Control(s)	Country chart
FC applies to entire entry	FC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 18 in. (45.72 cm), but less than 24 in. (60.96 cm) or buckshot shotgun shells controlled by this entry, regardless of end-user.	CC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm), regardless of end-user.	CC Column 2.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry	Rwanda.

* * * * *

0A985 Discharge type arms (for example, stun guns, shock batons, electric cattle prods, immobilization guns and projectiles) except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, UN.

Control(s)	
CC applies to entire entry. A license is required for ALL destinations, except Canada, regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See part 742 of the EAR for additional information.)	
UN applies to entire entry	Rwanda.

* * * * *

0A986 Shotgun shells, except buckshot shotgun shells, and parts.

License Requirements

Reason for Control: AT, FC, UN.

Control(s)	Country chart
AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.	
FC applies to entire entry	FC Column 1.
UN applies to entire entry. A license is required for items controlled by this entry to Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.	

* * * * *

0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and parts, n.e.s.

License Requirements

Reason for Control: FC, CC, UN.

Control(s)	Country chart
FC applies to optical sights for firearms, including shotguns described in ECCN 0A984, and related parts.	FC Column 1.
CC applies to entire entry	CC Column 1.
UN applies to entire entry	Rwanda.

* * * * *

0A988 Conventional military steel helmets as described by 0A018.f.1; and machetes.

License Requirements

Reason for Control: UN.

Control(s): UN applies to entire entry. A license is required for conventional military steel helmets as described by 0A018.f.1 to Rwanda. A license is required for machetes to Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

* * * * *

0B986 Equipment specially designed for manufacturing shotgun shells; and ammunition hand-loading equipment for both cartridges and shotgun shells.

License Requirements

Reason for Control: AT, UN.

Control(s): AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

UN applies to entire entry. A license is required for items controlled by this entry to Rwanda. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

* * * * *

0E018 ''Technology'' for the ''development'', ''production'', or ''use'' of items controlled by 0A018.b through 0A018.e.

License Requirements

Reason for Control: NS, UN, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
UN applies to entire entry	Rwanda.
AT applies to entire entry	AT Column 1.

License Exceptions

CIV: N/A
TSR: Yes, except N/A for Rwanda

* * * * *

0E984 ''Technology'' for the ''development'' or ''production'' of shotguns controlled by 0A984 and buckshot shotgun shells.

License Requirements

Reason for Control: CC, UN.

Control(s)	Country chart
CC applies to ''technology'' for shotguns with a barrel length over 18 in. (45.72 cm) but less than 24 in. (60.96 cm) and shotgun shells, regardless of end-user.	CC Column 1.
CC applies to ''technology'' for shotguns with a barrel length over 24 in. (60.96 cm), regardless of end-user.	CC Column 2.
CC applies to ''technology'' for shotguns with a barrel length over 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry	Rwanda.

* * * * *

13. In Category 1—Materials, Chemicals, ''Microoganisms'' & ''Toxins'', the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the ''License Requirements'' section and ''License Exceptions'' section for ECCNs 1B018 and 1C018; and

b. By revising the ''License Requirements'' section for ECCNs

1A005, 1C992, and 1D018, to read as follows:

1A005 Body armor, and specially designed components therefor, not manufactured to military standards or specifications, nor to their equivalents in performance.

License Requirements

Reason for Control: NS, UN, AT.

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
UN applies to entire entry	Rwanda.
AT applies to entire entry	AT Column 1.

* * * * *

1B018 Equipment on the International Munitions List.

License Requirements

Reason for Control: NS, MT, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to equipment for the ''production'' of rocket propellants.	MT Column 1.
RS applies to 1B018.a	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $3000 for 1B018.a for countries WITHOUT an ''X'' in RS Column 2 on the Country Chart contained in Supplement No. 1 to part 738 of the EAR; $5000 for 1B018.b; N/A for Rwanda.
GBS: N/A
CIV: N/A

* * * * *

1C018 Commercial charges and devices containing energetic materials on the International Munitions List.

License Requirements

Reason for Control: NS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $3000, except N/A for Rwanda
GBS: Yes for items listed in Advisory Note to 1C018, except N/A for Rwanda
CIV: N/A

* * * * *

1C992 Commercial charges and devices containing energetic materials, n.e.s.

License Requirements

Reason for Control: AT.

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

* * * * *

1D018 ''Software'' specially designed or modified for the ''development'', ''production'', or ''use'' of items controlled by 1B018.

License Requirements

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to ''software'' for the ''development'', ''production'', or ''use'' of items controlled by 1B018 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

* * * * *

14. In Category 2—Materials Processing, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the ''License Requirements'' section of ECCN 2A993; and

b. By revising the ''License Requirements'' section and the ''License Exceptions'' section for ECCNs 2B018, 2D018, and 2E018, to read as follows:

2A993 Explosive detection systems, consisting of an automated device, or combination of devices, with the ability to detect the presence of different types of explosives, in passenger checked baggage, without need for human skill, vigilance, or judgment.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

* * * * *

2B018 Equipment on the International Munitions List.

License Requirements

Reason for Control: NS, MT, RS, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to specialized machinery, equipment, and gear for producing rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) usable in systems that are controlled for MT reasons including their propulsion systems and components, and pyrolytic deposition and densification equipment.	MT Column 1.
RS applies to entire entry	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $3000, except N/A for Rwanda
GBS: Yes for Advisory Note in this entry to 2B018, except N/A for Rwanda
CIV: N/A

* * * * *

2D018 ''Software'' for the ''development'', ''production'' or ''use'' of equipment controlled by 2B018.

License Requirements

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to ''software'' for equipment controlled by 2B018 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

CIV: N/A
TSR: Yes, except N/A for Rwanda

* * * * *

2E018 ''Technology'' for the ''use'' of equipment controlled by 2B018.

License Requirements

Reason for Control: NS, MT, AT, UN.

Control(s)	Country chart
NS applies to entire entry	NS Column 1.
MT applies to ''technology'' for equipment controlled by 2B018 for MT reasons.	MT Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

CIV: N/A
TSR: Yes, except N/A for Rwanda

* * * * *

15. In Category 6—Sensors and Lasers, the following Export Control

Classification Numbers (ECCNs) are amended by revising the ''License Requirements'' section for ECCNs 6A002 and 6A003 and ''License Requirements'' section and the ''License Exceptions'' section for ECCNs 6A018, 6E001, and 6E002, to read as follows:

6A002 Optical sensors.

License Requirements

Reason for Control: NS, MT, CC, RS, AT, UN.

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2.
MT applies to optical detectors in 6A002.a.1, a.3, and .e that are specially designed or rated as electomagnetic (including and ionized particle radiation resistant.	MT Column 1.
RS applies to 6A002.a.1, a.2, a.3 and .c.	RS Column 1.
CC applies to police-model infrared viewers in 6A002.c.	CC Column 1.
AT applies to entire entry	AT Column 1.
UN applies to 6A002.a.1, a.2 a.3 and c.	Rwanda.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

6A003 Cameras.

License Requirements

Reason for Control: NS, NP, RS, AT, UN.

Control(s)	*Country chart*
NS applies to entire entry	NS Column 2.
NP applies to items controlled in paragraphs 6A003.a.2, a.3 and a.4.	NP Column 1.
RS applies to items controlled in 6A003.b.3 and b.4.	RS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to items controlled in 6A003.b.3 and b.4.	Rwanda.

* * * * *

6A018 Magnetic, pressure, and acoustic underwater detection devices specially designed for military purposes and controls and components therefor.

License Requirements

Reason for Control: NS, AT, UN.

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $5000, except N/A for Rwanda
GBS: N/A
CIV: N/A

* * * * *

6E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment, materials or ''software'' controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).

License Requirements

Reason for Control: NS, MT, NP, RS, CC, AT, UN.

Control(s)	*Country chart*
NS applies to ''technology'' for items controlled by 6A001 to 6A008, 6B004 to 6B008, 6C002 to 6C005, or 6D001 to 6D003.	NS Column 1.
MT applies to ''technology'' for items controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, 6B108, 6D001, 6D002, 6D102 or 6D103 for MT reasons.	MT Column 1.
NP applies to ''technology'' for equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons.	NP Column 2.
RS applies to ''technology'' for equipment controlled by 6A002 or 6A003 for RS reasons.	RS Column 1.
CC applies to ''technology'' for equipment controlled by 6A002 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.
UN applies to ''technology'' for equipment controlled by 6A002 or 6A003 for UN reasons.	Rwanda.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

CIV: N/A
TSR: Yes, except for the following:
(1) Items controlled for MT reasons;
(2) Items controlled by 6A004.e; or
(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for the ''development'' of the following: (a) Items controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, 6A001.a.2.e., 6A002.a.1.c, 6A008.l.3, 6B008, 6D003.a; (b) Equipment controlled by 6A001.a.2.c or 6A001.a.2.f when specially designed for real time applications; or (c) ''Software'' controlled by 6D001 and specially designed for the ''development'' or ''production'' of equipment controlled by 6A008.l.3 or 6B008; or
(4) Exports or reexports to Rwanda.

* * * * *

6E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment or materials controlled by 6A (except 6A018, 6A991, 6A992, 6A994, 6A995, 6A996, 6A997 or 6A998), 6B (except 6B995) or 6C (except 6C992 or 6C994).

License Requirements

Reason for Control: NS, MT, NP, RS, AT, CC, UN.

Control(s)	*Country chart*
NS applies to ''technology'' for equipment controlled by 6A001 to 6A008, 6B004 to 6B008, or 6C002 to 6C005.	NS Column 1.
MT applies to ''technology'' for equipment controlled by 6A002, 6A007, 6A008, 6A102, 6A107, 6A108, 6B008, or 6B108 for MT reasons.	MT Column 1.
NP applies to ''technology'' for equipment controlled by 6A003, 6A005, 6A202, 6A203, 6A205, 6A225 or 6A226 for NP reasons.	NP Column 1.
RS applies to ''technology'' for equipment controlled by 6A002 or 6A003 for RS reasons.	RS Column 1.
CC applies to ''technology'' for equipment controlled by 6A002 for CC reasons.	CC Column 1.
AT applies to entire entry	AT Column 1.
UN applies to ''technology'' for equipment controlled by 6A002 or 6A003 for UN reasons.	Rwanda.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

CIV: N/A
TSR: Yes, except for the following:
(1) Items controlled for MT reasons;
(2) Items controlled by 6A004.e; *or*
(3) Exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' for the ''development'' of the following: (a) Items controlled by 6A001.a.2.a.1,

6A001.a.2.a.2, 6A001.a.2.a.5, 6A001.a.2.b, and 6A001.a.2.c; and (b) Equipment controlled by 6A001.a.2.e and 6A001.a.2.f when specially designed for real time applications; or (c) ''Software'' controlled by 6D001 and specially designed for the ''development'' or ''production'' of equipment controlled by 6A002.a.1.c, 6A008.1.3 or 6B008; or

(4) Exports or reexports to Rwanda.

* * * * *

16. In Category 8—Marine, Export Control Classification Number (ECCN) 8A018 is amended by revising the ''License Requirements'' section and the ''License Exceptions'' section to read as follows:

8A018 Items on the International Munitions List.

License Requirements

Reason for Control: NS, AT, UN.

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $5000, except N/A for Rwanda
GBS: N/A
CIV: N/A

17. In Category 9—Propulsion Systems, Space Vehicles and Related Equipment, the following Export Control Classification Number (ECCNs) are amended:

a. By revising the ''License Requirements'' section and ''License Exceptions'' section for ECCN 9A018; and

b. By revising the ''License Requirements'' section for ECCNs 9A991, 9D018 and 9E018, to read as follows:

9A018 Equipment on the International Munitions List.

License Requirements

Reason for Control: NS, RS, AT, UN.

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1.
RS applies to 9A018.a and b	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

License Exceptions

LVS: $1500, except N/A for Rwanda
GBS: N/A
CIV: N/A

* * * * *

9A991 ''Aircraft'', n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.

License Requirements

Reason for Control: AT, UN.

Control(s)	*Country chart*
AT applies to entire entry	AT Column 1.
UN applies to 9A991.a	Rwanda.

* * * * *

9D018 ''Software'' for the ''use'' of equipment controlled by 9A018.

License Requirements

Reason for Control: NS, RS, AT, UN.

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1.
RS applies to 9A018.a and .b.	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

* * * * *

9E018 ''Technology'' for the ''development'', ''production'', or ''use'' of equipment controlled by 9A018.

License Requirements

Reason for Control: NS, RS, AT, UN.

Control(s)	*Country chart*
NS applies to entire entry	NS Column 1.
RS applies to 9A018.a and .b.	RS Column 2.
AT applies to entire entry	AT Column 1.
UN applies to entire entry	Rwanda.

* * * * *

Dated: November 8, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 02–29222 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–040]

Drawbridge Operation Regulations; Three Mile Creek, Mobile, Baldwin County, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the CSX Transportation Railroad Swing Span Bridge across Three Mile Creek, mile 0.3, at Mobile, Baldwin County, AL. This deviation allows the bridge to remain closed to navigation on December 9, 2002. The deviation is necessary to lift the girder off the pivot pedestal in order to remove the worn disc and install a new disc that affect the operation of the swing span.

DATES: This deviation is effective from 7 a.m. through 3 p.m. on December 9, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: CSX Transportation has requested a temporary deviation in order to lift the girder off the pivot pedestal in order to remove the worn disc and install a new disc that affect the opening and closing of the swing span bridge across Three Mile Creek at mile 0.3 at Mobile, Baldwin County, Alabama. This maintenance is essential for the continued operation of the bridge and is expected to eliminate frequent breakdowns resulting in emergency bridge closures. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. through 6 p.m. on Monday, December 9, 2002.

The swing span bridge has a vertical clearance of 10 feet above mean high water and 12 feet above mean low water in the closed-to-navigation position. Navigation on the waterway is primarily commercial, consisting of tugs with tows and fishing vessels. There is no recreational boat traffic at the bridge site. The only known commercial users of the waterway, D.R. Jordan Pile Driving, Inc. and Mobile Ship Yard, were both contacted and have no objection to the closure. The bridge normally opens to pass navigation on an average of 3 times per day. In accordance with 33 CFR 117.5, the draw of the bridge opens on signal. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating

regulations is authorized under 33 CFR 117.35.

Dated: November 15, 2002.

Marcus Redford,

Bridge Administrator.

[FR Doc. 02–29909 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–037]

Drawbridge Operation Regulations; Sabine River, Echo, Orange County, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad Swing Span Bridge across the Sabine River, mile 19.3, at Echo, Orange County, TX. This deviation allows the bridge to remain closed to navigation from December 3, 2002, through December 16, 2002. The deviation is necessary for bridge maintenance in order to continue safe operation of the swing span.

DATES: This deviation is effective from 7 a.m. on December 3, 2002, through 6 p.m. on December 16, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad has requested a temporary deviation in order to remove and replace the pivot casting and lenses that affect the opening and closing of the swing span bridge across the Sabine River at mile 19.3 near Echo, Orange County, Texas. This maintenance is essential in order to minimize the outage time for maintenance operations on the Union Pacific Railroad swing span bridge across the Calcasieu River at mile 36.4 near Lake Charles, Calcasieu Parish, Louisiana, where a trade of components will take place. The swing span pivot casting will be removed from the bridge at Echo for reconditioning and placement of new lenses on the bridge at Lake Charles. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. on Tuesday, December 3, 2002, through 6 p.m. on Monday, December 16, 2002.

The swing span bridge has a vertical clearance of 5.28 feet above 2 percent flow line, elevation 9.6 feet Mean Sea Level in the closed-to-navigation position. Navigation on the waterway consists of recreational boats only that launch from boat ramps upstream of the bridge. There is no commercial traffic at the bridge site. Recreational boat traffic is not a concern since recreational boating is minimal during the month of December and most recreational vessels can pass under the bridge while it is in the closed-to-navigation position. The bridge normally opens to pass navigation on an average of four times per year. In accordance with 33 CFR 117.493, the draw of the bridge opens on signal if at least 24 hours notice is given. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 15, 2002.

Marcus Redford,

Bridge Administrator.

[FR Doc. 02–29908 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–038]

Drawbridge Operation Regulations; Calcasieu River, Lake Charles, Calcasieu Parish, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad Swing Span Bridge across the Calcasieu River, mile 36.4, at Lake Charles, Calcasieu Parish, LA. This deviation allows the bridge to remain closed to navigation from December 7, 2002, through December 16, 2002. The deviation is necessary to remove the swing span pivot casting for placement of new lenses, resetting of reconditioned circular tracks and reconditioned balance wheels that affect the operation of the swing span.

DATES: This deviation is effective from 7 a.m. on December 7, 2002, through 6 p.m. on December 16, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad has requested a temporary deviation in order to remove and replace the pivot casting with reconditioned pivot casting and new lenses that affect the opening and closing of the swing span bridge across the Calcasieu River at mile 36.4 near Lake Charles, Calcasieu Parish, Louisiana. This maintenance is essential for the continued operation of the bridge and is being performed in conjunction with maintenance operations on the Union Pacific Railroad swing span bridge across the Sabine River at mile 19.3 near Echo, Orange County, Texas. Parts from the bridge at Echo will be removed, reconditioned and placed on the bridge at Lake Charles. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. on Saturday, December 7, 2002, through 6 p.m. on Monday, December 16, 2002.

The swing span bridge has a vertical clearance of 1.07 feet above mean high water, elevation 3.56 feet Mean Gulf Level in the closed-to-navigation position. Navigation on the waterway consists primarily of tugs with tows. There is very little commercial traffic at the bridge site. There are only three companies that transit above the bridge with barges. All three companies were contacted and have no objection to the 10 day closure. Recreational boat traffic is not a concern since recreational boating is minimal during the month of

December. The bridge normally opens to pass navigation on an average of five times per day. In accordance with 33 CFR 117.5, the draw of the bridge opens on signal. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 15, 2002.

Marcus Redford,

Bridge Administrator.

[FR Doc. 02–29907 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–039]

Drawbridge Operating Regulations; Inner Harbor Navigation Canal, New Orleans, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 46 (St. Claude Avenue) bridge across the Inner Harbor Navigation Canal, mile 0.5 (GIWW mile 6.2 East of Harvey Lock) in New Orleans, Orleans Parish, Louisiana. This deviation allows the bridge to remain closed to navigation from 6:45 a.m. until 6:45 p.m. on Wednesday, December 4, 2002. This temporary deviation is necessary to allow for the replacement of the lakeside lower forward roller assembly for the operating strut guide of the bridge.

DATES: This deviation is effective from 6:45 a.m. until 6:45 p.m. on Wednesday, December 4, 2002.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Board of Commissioners of the Port of New Orleans has requested a temporary deviation in order to replace the lakeside lower forward roller assembly for the operating strut guide of the bridge. These repairs are necessary for the continued operation of the bridge. This deviation allows the draw of the St. Claude Avenue bascule bridge across the Inner Harbor Navigation Canal, mile 0.5 (GIWW mile 6.2 East of Harvey Lock), to remain closed to navigation from 6:45 a.m. until 6:45 p.m. on Wednesday, December 4, 2002.

The bascule bridge has a vertical clearance of 1 foot above high water in the closed-to-navigation position. Navigation on the waterway consists mainly of tugs with tows and some ships. The bridge normally opens to pass navigation an average of eight times during the deviation period. In accordance with 33 CFR 117.458(a), the draw of the bridge opens on signal; except that, from 6:45 a.m. to 8:30 a.m. and from 4:45 p.m. to 6:45 p.m., Monday through Friday, except federal holidays, the draw need not open for the passage of vessels. Normally, the draw is required to open at any time for a vessel in distress. However, the bridge will not be able to open for emergencies during the closure period. An alternate route is available to mariners by proceeding down the Mississippi River to Venice, Louisiana, crossing the Breton Sound and proceeding up the Mississippi River Gulf Outlet.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 15, 2002.

Marcus Redford,

Bridge Administrator.

[FR Doc. 02–29906 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–02–014]

RIN 2115–AE47

Drawbridge Operation Regulation; Northeast Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0, in Wilmington, North Carolina. The final rule will reduce the number of bridge openings for transit of pleasure craft during a four-year bridge repair project. This change will reduce traffic delays while still providing for the reasonable needs of navigation. In addition, an administrative correction is being made to the name of the waterway. The ''Northeast River'' is being changed to the ''Northeast Cape Fear River''.

DATES: This rule is effective December 26, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as available in the docket, are part of docket CGD05–02–014 and are available for inspection or copying at Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 30, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Northeast Cape Fear River, Wilmington, North Carolina'' in the **Federal Register** (67 FR 37746). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Isabel S. Holmes Drawbridge is owned and operated by the North Carolina Department of Transportation (NCDOT). The regulation in 33 CFR 117.5 requires the bridge to open promptly and fully once a request to open is received. When the bridge is

closed there is 40 feet of vertical clearance.

The Isabel S. Holmes Bridge crosses the Northeast Cape Fear River. It makes connections with Route 133 and the US–17 corridor, which supports the general north/south flow of traffic through the region. The bridge is one of two river crossings under high vehicular use in the region. According to figures from 1999, approximately 19,000 vehicles pass over the bridge every day. Between 1999 and the present, an average of 12 pleasure craft per month transited the area and required bridge openings between the hours of 6 a.m. and 6 p.m. Motorists did not have an alternate route when traveling this stretch of highway unless they drove several traffic congested miles. Boaters did not have an alternate route to transit this waterway when the drawbridge was closed.

NCDOT requested permission to decrease the number of openings for pleasure craft to avoid excessive/hazardous traffic back-ups during repairs. NCDOT proposed an inter-modal compromise that will limit the times of draw openings during hours of bridge repair. NCDOT asserts that by closing the bridge to pleasure craft during daytime hours, except for two scheduled openings per day for waiting vessels, vehicular traffic congestion will be reduced and highway safety will be enhanced. NCDOT provided statistical data, which supports the traffic counts for a two-way four-lane bridge being changed to a two-way two-lane bridge. The data also revealed that the draw was opened an average of 12 times/month for pleasure craft, between the hours of 6 a.m. and 6 p.m. The Coast Guard considered restricting all navigation but chose not to, due to the safety concerns of restricting commercial vessels with hazardous cargoes. The Coast Guard believes that closure during the proposed time periods will not overburden recreational marine traffic while allowing the continued use of two lanes for the two-way flow of vehicular traffic.

This final rule will revise 33 CFR 117.829, which regulates the scheduled openings of the Seaboard System Railroad Bridge across Northeast Cape Fear River at mile 27.0. The previous regulatory text contains no paragraph designation. The regulatory text describes the ''Northeast River,'' and this section is incorrectly titled the ''Northeast River.'' This final rule corrects the river name and includes the Isabel S. Holmes Bridge in the same section.

Discussion of Comments and Changes

The Coast Guard received one letter on the NPRM. This letter stated they had no objection to the proposed rule, therefore, no changes were made to the final rule.

Regulatory Evaluation

This 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, l979).

We expect the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the fact that these changes will not impede maritime traffic transiting the bridge, but merely require mariners to plan their transits in accordance with the scheduled bridge openings, while still providing for the needs of the bridge owner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final 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 final rule will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities because the regulation does not restrict the movement of commercial navigation, but only restricts the movement of pleasure craft (approx. 12 openings each month). In addition, to avoid any potential restriction to navigation, maritime advisories will be widely available to users of the river.

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 can better evaluate its effects on them and participate in the rulemaking. In our notice of proposed rule making we provided a point of contact to small entities, who could answer questions concerning proposed provisions or options for compliance.

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 could 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 final rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.829 is revised to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) The draw of the Isabel S. Holmes Bridge, at mile 1.0, at Wilmington, North Carolina will operate as follows:

(1) The draw will be closed to pleasure craft from 6 a.m. to 6 p.m. every day except at 10 a.m. and 2 p.m. when the draw will open for all waiting vessels.

(2) The draw will open on signal for Government and commercial vessels at all times.

(3) The draw will open for all vessels on signal from 6 p.m. to 6 a.m.

(b) The draw of the Seaboard System Railroad Bridge across the Northeast Cape Fear River, mile 27.0, at Castle Hayne, North Carolina shall open on signal if at least 4 hours notice is given.

Dated: November 12, 2002.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–29905 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP No. MT23–1–6402; FRL–7412–2]

Approval and Promulgation of Air Quality Implementation Plans; Montana; State Implementation Plan Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On September 19, 1975, we approved the East Helena Sulfur Dioxide (SO_2) State Implementation Plan (SIP). Additionally, on May 1, 1984, we approved revisions to the East Helena SO_2 SIP. Finally, on January 27, 1995, we approved additional revisions to the East Helena SO_2 SIP. The East Helena SO_2 SIP approved on January 27, 1995, superceded the East Helena SO_2 SIP approved on September 19, 1975, and terminated the East Helena SO_2 SIP approved on May 1, 1984. However, when we approved the SIP revision on January 27, 1995, we did not indicate that it superceded and terminated earlier SIP approvals. EPA is making a correction to the regulatory language to clarify that the earlier East Helena SO_2 SIP revisions have been superceded or terminated by the East Helena SO_2 SIP approved on January 27, 1995.

DATES: This rule is effective on December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region 8, (303) 312–6437

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'' or ''our'' is used it means EPA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting incorrect text in previous rulemakings. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

I. Correction

When we approved the East Helena Sulfur Dioxide (SO_2) State Implementation Plan (SIP) on January 27, 1995 (60 FR 5313) (codified at 40 CFR 52.1370(c)(37)), we should have indicated that our September 19, 1975 (40 FR 43216) (currently codified at 40 CFR 52.1370(c)(5)), approval of the East Helena SO_2 SIP was superceded and that effective after November 15, 1995, our May 1, 1984 (49 FR 18482) (codified at 40 CFR 52.1370(c)(16)), approval of a revision to the East Helena SO_2 SIP was terminated. The Board Order issued on March 18, 1994, by the Montana Board of Health and Environmental Sciences, and incorporated by reference at 40 CFR 52.1370(c)(37)(i)(B), indicates that the SIP supercedes all requirements contained in the existing provisions of the SIP relating to sulfur dioxide in East Helena * * * except the provisions that relate to catalyst screening which terminated effective after November 15, 1995. We approved the East Helena SO_2 SIP on January 27, 1995, that contained an attainment demonstration and a control strategy for the primary SO_2 NAAQS. Therefore, pursuant to section 110(k)(6) of the Clean Air Act, we are clarifying 40 CFR 52.1370(c)(37) to indicate that the East Helena SO_2 SIP revision submitted on March 30, 1994, supercedes the East Helena SO_2 SIP approved in paragraph (c)(5) and, effective after November 15, 1995, terminates the East Helena SO_2 SIP approved in paragraph (c)(16).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May

22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, 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 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the September 19, 1975, May 1, 1984, and January 27, 1995, actions approving revisions to the East Helena SO_2 SIP.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of December 26, 2002. 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**. These corrections to the identification of plan for Montana is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

Dated: November 14, 2002.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart BB—Montana

2. Section 52.1370 is amended by revising the introductory text of paragraph (c)(37) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(37) The Governor of Montana submitted a State Implementation Plan (SIP) revision meeting the requirements for the primary SO_2 NAAQS SIP for the East Helena, Montana nonattainment area with a letter dated March 30, 1994. The submittal was to satisfy those SO_2 nonattainment area SIP requirements due for East Helena on May 15, 1992. The East Helena SO_2 SIP revision submitted on March 30, 1994, supercedes the East Helena SO_2 SIP approved in paragraph (c)(5) of this section and, effective after November 15, 1995, terminates the East Helena SO_2 SIP approved in paragraph (c)(16) of this section.

* * * * *

[FR Doc. 02–29775 Filed 11–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 272–0376; FRL–7412–9]

Withdrawal of Direct Final Rule Revising the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On October 7, 2002 (67 FR 62385), EPA published a direct final approval of a revision to the Bay Area Air Quality Management District (BAAQMD) State Implementation Plan (SIP). This revision concerned BAAQMD Rule 9–10, Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators, and Process Heaters in Petroleum Refineries. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by November 6, 2002, EPA would publish a timely withdrawal in the **Federal Register**. EPA received timely adverse comments and is, therefore, withdrawing the direct final approval. EPA will address the comments in a subsequent final action based on the parallel proposal also published on October 7, 2002 (67 FR 62427). As stated in the parallel proposal, EPA will not institute a second comment period on this action. The interim final determination also published on October 7, 2002 and also regarding BAAQMD Rule 9–10 is not affected by this withdrawal.

EFFECTIVE DATE: The direct final rule published on October 7, 2002, is withdrawn as of November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 947–972–3960.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 7, 2002.

Sally Seymour,

Acting Regional Administrator, Region IX.

Accordingly, the revision to 40 CFR 52.220, published in the **Federal Register** on October 7, 2002 (67 FR 62385), [FR Doc. 02–25297 Filed 10–4–02], which was to become effective on December 6, 2002, is withdrawn.

[FR Doc. 02–29884 Filed 11–22–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–3176, MM Docket No. 00–138, RM–9896]

Digital Television Broadcast Service; Boca Raton, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, by this document, denies a petition for reconsideration filed by Sherjan Broadcasting Company, Inc., of the Report and Order, which substituted DTV channel *40 for station WPPB–TV's assigned DTV channel *44 at Boca Raton, Florida.[1] With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 00–138, adopted November 14, 2002, and released November 20, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–29853 Filed 11–22–02; 8:45 am]

BILLING CODE 6712–01–P

[1] This *Report and Order* was not published in the **Federal Register**.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011005244–2011–02; I.D. 111902A]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Reopening of Directed Fishery for Loligo Squid

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

ACTION: Directed fishery reopening.

SUMMARY: NMFS announces that commercial quota is available to allow the directed fishery for Loligo squid to reopen. Vessels issued a Federal moratorium permit to harvest Loligo squid in excess of the incidental catch allowance may resume landing of Loligo squid effective 0001 hours, December 2, 2002, through 0001 hours, December 12, 2002. The intent of this action is to allow for the full utilization of the commercial quota allocated to the Loligo squid directed fishery.

DATES: Effective 0001 hours, December 2, 2002, through 0001 hours, December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail paul.h.jones@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 648.22 of part 50 CFR requires NMFS to close the directed Loligo squid fishery in the EEZ for the remainder of the year when 95 percent of the total annual domestic annual harvest (DAH) has been harvested. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, determined that 95 percent of the total DAH for *Loligo* squid would be harvested by November 2, 2002 (67 FR 66072, October 30, 2002). Therefore, effective 0001 hours, November 2, 2002, the directed fishery for *Loligo* squid was closed. However, the closure threshold level of *Loligo* harvest has not yet been attained. Therefore, NMFS announces that the directed *Loligo* squid fishery will reopen. Vessels issued a Federal moratorium permit to harvest *Loligo* squid in excess of the incidental catch allowance may resume fishing for, retaining and landing Loligo squid in excess of the incidental catch allowance from 0001 hours, December 2, 2002, through 0001 hours, December 12, 2002. After 0001 hours, December 12, 2002, the directed fishery for *Loligo* squid will be closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) of *Loligo*. Such vessels may not land more than 2,500 lb (1.13 mt) of *Loligo* during a calendar day. The directed fishery will reopen effective 0001 hours, January 1, 2003, when the 2003 quota becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: November 20, 2002.

Richard W. Surdi,

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

[FR Doc. 02–29893 Filed 11–20–02; 4:26 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 111902D]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Connecticut

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

ACTION: Closure; commercial quota harvested for Connecticut.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Connecticut has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Connecticut for the remainder of calendar year 2002,

unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Connecticut that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Connecticut.

DATES: Effective 0001 hours, November 20, 2002, through 2400 hours, December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2002 calendar year was set equal to 14,578,288 lb (6,612,600 kg)(66 FR 66348, December 26, 2001). The percent allocated to vessels landing summer flounder in Connecticut is 2.25708 percent, resulting in a commercial quota of 329,044 lb (149,258 kg). The 2002 allocation was not adjusted because there was no overage of the 2001 quota, as of October 31, 2001.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota is harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Connecticut has attained its quota for 2002.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, November 20, 2002, further landings of summer flounder in Connecticut by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2002 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, November 20, 2002, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Connecticut for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 20, 2002.

Richard W. Surdi,

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

[FR Doc. 02–29892 Filed 11–20–02; 4:26 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 111802A]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using pot and trawl gear to catcher/processor vessels using hook-and-line gear in the BSAI. These actions are necessary to allow the 2002 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective November 20, 2002, until 2400 hours, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

On October 2, 2002 (67 FR 61826), the harvest specifications for Pacific cod established by the emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002) were revised as follows: 300 mt to vessels using jig gear, 81,920 mt to catcher processor vessels using hook-and-line gear, 482 mt to catcher vessels using hook-and-line gear, 17,535 mt to vessels using pot gear, 40,475 mt to trawl catcher/processors, and 42,475 mt to trawl catcher vessels.

As of November 8, 2002, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that trawl catcher/processors will not be able to harvest 3,500 mt and trawl catcher vessels will not be able to harvest 1,000 mt of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(B). Therefore, in accordance with § 679.20(a)(7)(ii)(C), NMFS apportions 4,500 mt of Pacific cod from trawl gear to catcher/processor vessels using hook-and-line gear.

The Regional Administrator determined that vessels using pot gear will not be able to harvest 3,500 of their Pacific cod allocation by the end of the year. Therefore, in accordance with §679.20(a)(7)(ii)(C), NMFS is reallocating the unused amount of 3,500 mt of Pacific cod allocated to vessels using pot gear to catcher/processor vessels using hook-and-line gear.

The harvest specifications for Pacific cod established by the emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002) and the reallocation of Pacific cod in the Bering Sea and Aleutian Islands management area (67 FR 61826, October 2, 2002) are revised as follows: 89,920 mt to catcher processor vessels using hook-and-line gear, 14,035 mt to pot gear, 36,975 mt to trawl catcher/processors, and 41,475 mt to trawl catcher vessels.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the

requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the implementation of these measures in a timely fashion in order to allow full utilization of the Pacific cod TAC, and therefore reduce the public's ability to use the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is taken under 50 CFR 679.20 and is exempt from OMB review under Executive Order 12866.

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

Dated: November 19, 2002.

Richard W. Surdi,

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

[FR Doc. 02–29891 Filed 11–20–02; 4:27 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 227
Monday, November 25, 2002

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 960

RIN 3206–AJ68

Federal Executive Boards

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise its regulations governing Federal Executive Boards. The proposed regulations are intended to make the regulations concerning the Boards consistent with the current OPM structure and not to make substantive changes.

DATES: Comments must be submitted on or before January 24, 2003.

ADDRESSES: Send or deliver written comments to Paula L. Bridgham, Director for Federal Executive Board Operations U.S. Office of Personnel Management, Room 5524, 1900 E Street, NW, Washington, DC 20415: (FAX: (202) 606–3350 or e-mail: *plbridgh@opm.gov*).

FOR FURTHER INFORMATION CONTACT: Paula L. Bridgham, Director for Federal Executive Board Operations, U.S. Office of Personnel Management, (202) 606–1000; FAX: (202) 606–3350 or e-mail: *plbridgh@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is proposing to revise its current regulations concerning Federal Executive Boards. The purpose of this revision to part 960 is not to make substantive changes but, rather, to make part 960 more readable and consistent with current OPM structure. For example, we have deleted or revised repetitive and duplicative sections, updated titles and locations of agency officials, and made other simplifying changes.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the effects are limited primarily to federal employees and other entities doing business with OPM.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 960

Organization and functions (Government agencies).

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is proposing to revise part 960 of title 5 of the Code of Federal Regulations as follows:

PART 960—FEDERAL EXECUTIVE BOARDS

Sec.
960.101 Definitions.
960.102 What is the authority and status for Federal Executive Boards?
960.103 Where are Federal Executive Boards located?
960.104 Who are members of Federal Executive Boards?
960.105 How are Federal Executive Boards organized?
960.106 What is the Office of Personnel Management's leadership role?
960.107 What are the authorized activities of Federal Executive Boards?
960.108 Are there additional rules and directives for Federal Executive Boards?

Authority: Memorandum of the President for Heads of Departments and Agencies (November 10, 1961).

§ 960.101 Definitions.

For purposes of this part:

The term *Director* means the Director of the United States Office of Personnel Management.

The term *Executive agency* means a department, agency, or independent establishment in the Executive Branch.

The term *metropolitan area* means a geographic zone surrounding a major city, as defined by the Director.

The term *principal area officer* means, with respect to an Executive agency, the senor official of the Executive agency who is located in a metropolitan area and who has no superior official within that metropolitan area other than in the Regional Office of the Executive agency. Where an Executive agency maintains facilities of more than one bureau or other subdivision within the metropolitan area, and where the heads of those facilities are in separate chains of command within the Executive agency, then the a may have more than one principal area officer.

The term *principal regional officer* means, with respect to an Executive agency, the senior official in a Regional Office of the Executive agency.

The term *special representative* means, with respect to an Executive agency, an official who is not subject to the supervision of a principal regional officer or a principal area officer and who is specifically designated by the head of the Executive agency to serve as the personal representative of the head of the Executive agency.

§ 960.102 What is the authority and status for Federal Executive Boards?

Federal Executive Boards are established by direction of the President in order to strengthen the management and administration of Executive Branch activities in selected centers of field operations. Federal Executive Boards are organized and function under the authority of the Director.

§ 960.103 Where are Federal Executive Boards located?

There are Federal Executive Boards in the following metropolitan areas: Albuquerque-Santa Fe, Atlanta, Baltimore, Boston, Buffalo, Chicago, Cincinnati, Cleveland, Dallas-Fort Worth, Denver, Detroit, Honolulu, Houston, Kansas City, Los Angeles, Miami, Minneapolis-St. Paul, New Orleans, New York, Newark, Oklahoma City, Philadelphia, Pittsburgh, Portland, St. Louis, San Antonio, San Francisco, and Seattle. The Director may dissolve, merge, divide or expand any of the existing Federal Executive Boards, or establish new Federal Executive Boards.

§ 960.104 Who are members of Federal Executive Boards?

(a) *Presidential Directive.* The President directed the heads of agencies to arrange for the leading officials of their respective agencies' field activities to participate personally in the work of Federal Executive Boards.

(b) *Members.* The head of every Executive agency shall designate, by title of office, the principal regional

officer, if any, and the principal area officer or officers, if any, who shall represent the agency on each Federal Executive Board; and by name and title of office, the special representative, if any, who shall represent the head of the agency on each Federal Executive Board. Such designations shall be made in writing and transmitted to the Director, and may be transmitted through the Chairs of the Federal Executive Boards. Designations may be amended at any time by the head of the Executive agency.

(c) *Alternate Members.* Each member of a Federal Executive Board may designate an alternate member, who shall attend meetings and otherwise serve in the absence of the member. An alternate member shall be the deputy or principal assistant to the member or another senior official of the member's organization.

§ 960.105 How are Federal executive Boards organized?

(a) *Bylaws.* A Federal Executive Board shall adopt bylaws or other rules for its internal governance, subject to the approval of the Director. Such bylaws and other rules may reflect the particular needs, resources, and customs of each Federal Executive Board, provided that they are not inconsistent with the provisions of this part or with the directives of the President or the Director. To the extent that such bylaws and other rules conflict with these provisions or the directives of the President or the Director, such bylaws and other rules shall be null and void.

(b) *Chair.* Each Federal Executive Board shall have a Chair, who shall be elected by the members from among their number, and who shall serve for a term of office not to exceed 1 year.

(c) *Staff.* As they deem necessary, members shall designate personnel from their respective organizations to serve as the staff or participate in the activities of the Federal Executive Board. Other personnel may serve as staff of a Federal Executive Board only with the approval of the Director.

(d) Unless otherwise expressly provided by law, by directive of the President or the Director, or by the bylaws of the Federal Executive Board, every committee, subcommittee, council, and other sub-unit of the Federal Executive Board, and every affiliation of the Federal Executive Board with external organizations, shall expire upon expiration of the term of office of the Chair. Such a committee, subcommittee, council, other sub-unit, or affiliation may be reestablished or renewed by affirmative action of the Federal Executive Board.

(e) *Board Actions.* A Federal Executive Board shall take actions only with the approval of a majority of the members thereof. This authority may not be delegated. All activities of a Federal Executive Board shall conform to applicable laws and shall reflect prudent uses of official time and funds.

§ 960.106 What is the Office of Personnel Management's leadership role?

(a) *Role of the Director.* The Director is responsible to the President for the organizational and programmatic activities of the Federal Executive Boards. The Director shall direct and oversee the operations of Federal Executive Boards consistent with law and with the directives of the President. The Director may consult with the Chairs, members, and staff of the Federal Executive Boards.

(b) *Communications.* The Office of Personnel Management shall maintain a channel of communication from the Director through the Director for Federal Executive Board Operations to the Chairs of the Federal Executive Boards. Any Executive agency may communicate with the Director and wit the Federal Executive Boards. Chairs of Federal Executive Boards may communicate with the Director on recommendations for action at the national level, on significant management problems that cannot be addressed at the local level, and on other matters of interest to the Executive Branch.

(c) *Reports.* Each Federal Executive Board shall transmit to the Director an annual strategic plan and an annual report, signed by the Chair, describing the significant programs and activities of the Federal Executive Board in each fiscal year. Each strategic plan shall set forth the proposed general agenda for the succeeding fiscal year. The strategic plan shall be subject to the approval of the Director. Each annual report shall describe and evaluate the preceding fiscal year's activities. Annual reports shall be submitted on or before January 1 and annual strategic plans shall be submitted on or before July 1. In addition, members of Federal Executive Boards shall keep the headquarters of their respective Executive agencies informed of their activities by timely reports through appropriate agency channels.

(d) *Conferences.* The Director may convene regional and national conferences of Chairs and other representatives of Federal Executive Boards.

§ 960.107 What are the authorized activities of Federal Executive Boards?

(a) Each Federal Executive Board serves as an instrument of outreach for the national headquarters of the Executive Branch in the metropolitan area. Each Federal Executive Board shall consider common management and program problems and develop cooperative arrangements that promote the general objectives of the Government and of the several Executive agencies in the metropolitan area. Efforts of members, alternates, and staff in those areas shall be made with the guidance and approval of the Director; within the range of the delegated authority and discretion they hold; within the resources available; and consistent with the missions of the Executive agencies involved.

(b) Each Federal Executive Board shall:

(1) Provide a forum for the exchange of information between Washington and the field, and among field elements in the metropolitan area, about programs and management methods and issues;

(2) Develop local coordinated approaches to the development and operation of programs that have common characteristics;

(3) Communicate management initiatives and other concerns from Washington to the field to achieve mutual understanding and support; and

(4) Refer problems that cannot be solved locally to the national level.

(c) Subject to the guidance of the Director, the Federal Executive Boards shall provide local leadership and coordination for:

(1) Presidential initiatives on management reforms; personnel initiatives of the Office of Personnel Management; programs of the Office of Management and Budget and the General Services Administration;

(2) The local Combined Federal Campaign, under the direction of the Director;

(3) The sharing of technical knowledge and resources in finance, internal auditing, personnel management, information technology, interagency use of training and meeting facilities, and similar commonly beneficial activities;

(4) The pooling of resources to provide, as efficiently as possible, and at the least possible cost to the taxpayers, common services such as cardiopulmonary resuscitation (CPR) training, preventive health programs, child care and elder care activities, blood donor programs, and savings bond drives;

(5) Encouragement of employee initiative and better performance

through special recognition and other incentive programs, and provision of assistance in the implementation and upgrading of performance management systems;

(6) Emergency operations, such as under hazardous weather conditions and natural or man-made disasters; responding to blood donation needs; and communicating related leave policies;

(7) Recognition of the service of American Veterans and dissemination of information relating to programs and benefits available for veterans in the Federal service; and

(8) Other programs, projects, and operations as approved by the Director.

(d) The Office of Personnel Management shall advise Federal Executive Boards on activities in the areas of performance appraisal and incentives, interagency training programs, the educational development of Government employees, improvement of labor-management relations, equal employment opportunity, the Federal Women's Program, the Federal Equal Opportunity Recruitment Program, the Hispanic Employment Program, the Veterans Employment Program, and selective placement programs for individuals with disabilities.

(e) The Director may direct one or more of the Federal Executive Boards to address specific programs or undertake cooperative activities.

§ 960.108 Are there additional rules and directives for Federal Executive Boards?

The Director may issue additional rules, guidance, and directives to the Federal Executive Boards.

[FR Doc. 02–29848 Filed 11–22–02; 8:45 am]

BILLING CODE 6325–46–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 278 and 279

RIN 0584–AD23

Food Stamp Program: Administrative Review Requirements—Food Retailers and Wholesalers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action will revise Food Stamp Program regulations affecting the administrative review process available to retail and wholesale firms participating in the Food Stamp Program. It proposes to streamline and make technical corrections to this process by amending portions of current regulations. The changes will eliminate repetitious, outdated and unnecessary provisions without taking away a firm's right to an administrative review. This rule also proposes to make technical corrections.

DATES: Comments must be received on or before January 24, 2003 to be assured of consideration.

ADDRESSES: Comments should be submitted to Karen Walker, Chief, Retailer Management Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Ms. Walker at (703) 305–1863, or by e-mail to *karen.walker@fns.usda.gov.* All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 408.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Ms. Walker at the above address or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and therefore, was not reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments and consult with them as they develop and carry out those policy actions. The Food and Nutrition Service (FNS) has considered the impact of this rule that proposes streamlining and making technical changes to FNS' administrative review process available to retail food stores and wholesale concerns participating in the Food Stamp Program. This proposed rule has no Federalism implications in that procedural changes set forth do not affect State and local governments. This proposed rule does not impose any substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. §§ 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. It proposes to eliminate repetitious, outdated and unnecessary provisions; aggrieved businesses will continue to have the right to administrative reviews under this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections.

Written comments must be submitted on or before January 24, 2003.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology. *Comments may be sent to:* Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20203. Comments may also be submitted to Karen Walker, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be faxed to the attention of Ms. Walker at (703) 305–1863, or e-mailed to *Karen.Walker@fns.usda.gov.*

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

OMB Number: To be assigned.

Expiration Date: 3 years from date of approval.

Type of Request: New collection.

Abstract: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal agency responsible for the Food Stamp Program. The Food Stamp Act of 1977, as amended, (7 U.S.C. 2011–2036) requires that the Agency determine the eligibility of firms and certain food service organizations to participate in the Food Stamp Program. If a retail food store is found to be ineligible by FNS, that store has the right to request an administrative review of the decision. Such requests must be made in writing. This is not a new collection requirement, but the Food Stamp Program has never accounted for the burden associated with this activity.

Affected Public: Retail food stores and wholesale concerns.

Estimated Number of Respondents: 1,140

Number of Responses per Respondent: 1.2

Estimated Total Annual Responses: 1,368

Hours per Response: .17.

Total Annual Reporting Hours: 232.56.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of the preamble of the final rule. In the Food Stamp Program, the administrative procedures for retailers and wholesalers are as follows: for Program retailers and wholesalers—administrative procedures are issued pursuant to section 14 of the FSA (7 U.S.C. 2023) and 7 CFR 279.

Public Law 104–4

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS 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, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not economically significant, nor subject to the requirements of sections 202 and 205 of the UMRA.

Background

In this rule, FNS is proposing to revise food stamp regulations affecting the administrative review process for retail food stores and wholesale food concerns participating in the Food Stamp Program. The revisions will streamline the administrative review process by eliminating repetitive and unnecessary provisions and consolidating other provisions in current regulations found in 7 CFR 278 and 279. These revisions will not change the rights of aggrieved food retailers and wholesale food concerns to request and obtain an administrative review from FNS. Also, this rule proposes to make technical corrections involving regulatory cites listed in section 278.1.

7 CFR 278.1—Approval of Retail Food Stores and Wholesale Food Concerns

This section provides information regarding the authorization withdrawals and denials of firms participating or seeking to participate in the Food Stamp Program. References included in paragraphs (k)(1) and (2) and (l)(1)(ii) and (iii) are not correct and this rule proposes to correct them.

7 CFR 278.8—Administrative Review—Retail Food Stores and Wholesale Food Concerns

This section in current regulations provides information regarding how food retailers or wholesale food concerns aggrieved by an administrative action can file a request for an administrative review. It references sections that deal with specific administrative actions that are subject to review and provides the address where requests for reviews must be sent. This same information in more detail is provided in 7 CFR 279, and the Department believes including that same or similar information in two places is repetitive. Therefore, this rule proposes to remove the language from 7 CFR 278.8. Reference changes reflecting this removal have been made throughout in §§ 278.1, 278.6 and 278.7.

7 CFR 279 Subpart A—Administrative Review—General; Subpart B—Rules of Procedure; and, Subpart C—Judicial Review

Under Current regulations, 7 CFR 279 is divided into three subparts. Subparts A and B pertain to the administrative review process, while subpart C pertains to the judicial review process. The Department believes having two different subparts for the administrative review process may be confusing to readers and should be clarified. Therefore, the rule proposes to collapse subpart B into subpart A and re-designate subpart C as subpart B. This change will provide a clear distinction between the two different review processes. Under the proposed change, subpart A will cover the administrative review process and subpart B will cover the judicial review process. In addition, throughout part 279 of the proposed rule, the term ''administrative review officer'' is changed to ''designated reviewer'', which conforms to section 14(a)(5) of the Food Stamp Act of 1977 (7 U.S.C. § 2023(a)(5))), which gives the Secretary the authority to designate such reviewers. The responsibilities of the designated reviewer will be the same as the administrative review officer under current rules.

Scope and purpose—7 CFR 279.1

Scope and purpose: The introductory paragraph at 7 CFR 279.1 clarifies the scope of purpose of each of the subparts mentioned above. Since the proposed rule would collapse subpart B into subpart A, such clarification is unnecessary. Therefore, under the proposed regulation, the introductory paragraph at 7 CFR 279.1 is removed and replaced with amended language from 7 CFR 279.3 in current rules which explains the jurisdiction and authority of the administrative review process.

Administrative Review Officer—7 CFR 279.2.

Administrative review officer: Current regulations include a section describing how review officers are designated and are assigned cases to review. The Department believes this is internal guidance for FNS and does not belong in regulations. Therefore, the proposed rule would remove this section entirely.

Authority and Jurisdiction—7 CFR 279.3

Authority and jurisdiction: Current regulations describe the authority and jurisdiction of the administrative review process at 7 CFR 279.3. The proposed regulation would include that section at 7 CFR 279.1. It also proposes to amend that section for clarification purposes by adding a separate paragraph for disqualifications. Current regulations include that with a paragraph on the imposition of fines.

Rules of Procedure—7 CFR 279.4

Rules of procedures: Current regulations at 7 CFR 279.4 separate the administrative review process into two subparts, A and B. These regulations include an introductory paragraph clarifying what information is included under subpart A and subpart B, which is not included in the proposed rule. Under the proposed rule, all information involving the administrative review process is included under a single subpart (subpart A); therefore, there is no longer a need for an introductory paragraph clarifying two subparts.

Content of Request—7 CFR 279.6

Content of request for review: Current regulations at 7 CFR 279.6 include language regarding requests for in person meetings with administrative review officers. Currently there are only three locations where such meetings take place, so most firms that wish to have meetings must travel long distances to participate in them. The review is based on the facts of the case which can be presented in writing or orally by phone. Firms can and do talk with reviewers by phone. Even though very few firms request in-person meetings, the Department believes that offering in-person meetings gives the impression that stores which cannot avail themselves of the meeting are disadvantaged. Therefore, the rule proposes to eliminate these meetings. Aggrieved retailers can participate in conference calls with administrative review staff if requested.

Action Upon Receipt of a Request for Review—7 CFR 279.7

Failure to meet with review officer: Current regulations at 7 CFR 279.7(c), include a paragraph dealing with the in-person meetings. This provision would no longer be relevant if these meetings no longer take place; therefore, the proposed rule would remove this paragraph.

Determination of the Administrative Review Officer—7 CFR 279.8

Determination notification: Current regulations at 7 CFR 279.8(e) and (f) include information about the determination notification process. This proposed rule would combine paragraphs (e) and (f) into paragraph (e) and redesignate paragraph (g) as paragraph (f). In addition, technical corrections are proposed for paragraph (b) to reflect changes made by a prior regulation.

Implementation

The Department is proposing that the provisions of this rulemaking be implemented 60 days after publication of the final rule.

List of Subjects

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, General line-wholesalers, Groceries, Groceries-retail, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, General line-wholesalers, Groceries, Groceries-retail.

Accordingly, 7 CFR parts 278 and 279, are proposed to be amended as follows:

1. The authority citation for parts 278 and 279 continue to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

§ 278.1 [Amended]

2. In § 278.1:

a. Paragraph (k)(1) is amended by removing the reference ''(g) or (h)'' and adding in its place the reference ''(g), (h) or (i)'';

b. Paragraph (k)(2) is amended by removing in the first sentence the words ''the Food Stamp Act of 1977, as amended;'' and adding in its place the words ''paragraph (b)(1)(i) of this section;'' and by removing the reference ''(b)(1)(iv)'' and adding in its place the reference (b)(1)(vi)'';

c. Paragraph (l)(1)(ii) is amended by removing the reference ''(g), or (h)'' and adding in its place the reference ''(g), (h) or (i)'';

d. Paragraph (l)(1)(iii) is amended by removing the words ''the Food Stamp Act of 1977, as amended,'' and adding in its place the words ''paragraph (b)(1)(i) of this section;'' and by removing the reference ''(b)(1)(iv)'' and adding in its place the reference ''(b)(1)(vi)''.

e. The regulatory reference ''§ 279.5'' is removed in paragraph (l)(2) and the regulatory reference ''part 279'' is added in its place; and

f. The regulatory reference ''§ 278.8,'' is removed in paragraph (p) and the regulatory reference ''part 279'' is added in its place.

§ 278.6 [Amended]

3. In 278.6, the regulatory reference ''§ 279.5'' is removed wherever it appears in paragraphs (b), (c) and (n), and the regulatory reference ''part 279'' is added in its place.

§ 278.7 [Amended]

4. In § 278.7, the regulatory reference ''§ 278.8'' is removed in paragraph (f) and the regulatory reference ''part 279'' is added in its place.

§ 278.8 [Removed and Reserved]

5. § 278.8 is removed and reserved.

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

6. In part 279:

a. The words ''administrative review officer'' are removed wherever they appear and the words ''designated reviewer'' are added in their place; and

b. The words ''review officer'' are removed wherever they appear and the words ''designated reviewer'' are added in their place.

7. Subpart A is further amended by removing the word ''—General'' in the Subpart heading.

8. Revise § 279.1 to read as follows:

§ 279.1 Jurisdiction and authority.

A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 of this chapter may, within a period stated in this part, file a written request for review of the administrative action with FNS. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review, except in the case of a permanent disqualification as specified in § 278.6(e)(1) of this chapter.

(a) *Jurisdiction.* Reviewers designated by the Secretary shall act for the Department on requests for review filed by food retailers or wholesale food concerns aggrieved by any of the following actions:

(1) Denial of an application or withdrawal of authorization to participate in the program under § 278.1 of this chapter;

(2) Disqualification under § 278.6 of this chapter, except that a disqualification for failure to pay a civil

money penalty shall not be subject to administrative review and a disqualification imposed under § 278.6(e)(8) of this chapter shall not be subject to administrative or judicial review;

(3) Imposition of a fine under § 278.6 of this chapter;

(4) Denial of all or part of any claim asserted by a firm against FNS under § 278.7(c), (d), or (e) of this chapter;

(5) Assertion of a claim under § 278.7(a) of this chapter; or

(6) Forfeiture of part or all of a collateral bond under § 278.1 of this chapter, if the request for review is made by the authorized firm. FNS shall not accept requests for review made by a bonding company or agent.

(b) *Authority.* The determination of the designated reviewer shall be the final administrative determination of the Department, subject, however, to judicial review under section 14 of the Food Stamp Act and subpart B of this part.

§§ 279.2 through 279.4 [Removed]

9. Remove §§ 279.2 through 279.4.

§§ 279.5 through 279.11 [Redesignated and Transferred]

10. Subpart B is further amended by redesignating §§ 279.5 through 279.9 as §§ 279.2 through 279.6, respectively, and transferring them to Subpart A.

§ 279.2 [Amended]

11. Amend newly redesignated § 279.2 as follows:

a. The heading of paragraph (a) is amended by removing the word ''Addressing'' and adding in its place the word ''Submitting''.

b. Paragraph (a) is further amended by removing the words ''Room 304''.

c. Paragraph (c) introductory text is amended by removing the words ''with the Director, Administrative Review Division,''.

§ 279.3 [Amended]

12. Remove the last two sentences of paragraph (b) in newly redesignated § 279.3.

13. Amend newly redesignated § 279.4 as follows:

a. Paragraph (a) is amended by revising the first two sentences and by removing the last sentence;

b. Paragraph (c) is revised; and

c. Paragraph (d) is removed.

The revisions read as follows:

§ 279.4 Action upon receipt of a request for review.

(a) Upon receipt of a request for review of administrative action, the administrative action shall be held in abeyance until the designated reviewer has made a determination. However, permanent disqualifications for trafficking shall not be held in abeyance and shall be effective immediately as specified in § 278.6(b)(2) of this chapter.

* * *

* * * * *

(c) *Extensions of time.* Upon timely written request to FNS by the firm requesting the review, FNS may grant extensions of time if, in FNS' discretion, additional time is required for the firm to fully present information in support of its position. However, no extension may be made in the time allowed for the filing of a request for review.

14. Amend newly redesignated § 279.5 as follows:

a. The heading of this section is revised and the heading of paragraph (a) is amended by removing the word ''officer'',

b. Paragraph (b), (c) and (e) are revised; and

c. Paragraph (f) is removed and paragraph (g) is redesignated as paragraph (f).

The revisions read as follows:

§ 279.5 Determination of the designated reviewer.

* * * * *

(b) *Review of denial or withdrawal of authorization.* When the action under review is the denial of an application for authorization or the withdrawal of an existing authorization, the designated reviewer shall sustain the action under review; sustain the action under review, but specify a shorter period of time the action will remain in effect; or direct that the action under review be reversed.

(c) *Review of disqualification or civil money penalty or fine.* When the action under review is disqualifying a firm from program participation or assessing a civil money penalty or fine against a firm, the designated reviewer shall: sustain the action under review; specify a shorter period of disqualification; specify a reduced money penalty or fine; direct that an official warning letter be issued to the firm in lieu of a disqualification, civil money penalty or fine; or, direct that the action under review be reversed. The designated reviewer may change a disqualification of a firm to a civil money penalty if the disqualification would cause a hardship to participating households (except in the case of a permanent disqualification). The designated reviewer, working with the appropriate FNS office, shall determine if circumstances warrant a civil money penalty in accordance with § 278.6 of this chapter.

* * * * *

(e) *Determination notifications.* FNS shall notify the firm of the determination. Such notification will be sent to the representative of the firm who filed the request for review.

* * * * *

15. In newly redesignated § 279.6, revise paragraph (a) to read as follows:

§ 279.6 Legal advice and extensions of time.

(a) *Advice from Office of the General Counsel.* If any request for review involves any doubtful questions of law, the Benefit Redemption Division shall obtain the advice of the Department's Office of the General Counsel.

* * * * *

Subpart B—[Removed]

16. Subpart B is removed.

Subpart C—[Redesignated as Subpart B]

17. Subpart C is redesignated as Subpart B.

§§ 279.10 and 279.11 [Redesignated as §§ 279.7 and 279.8]

18. Redesignate §§ 279.10 and 279.11 as §§ 279.7 and 279.8.

§ 279.7 [Amended]

19. Amend newly redesignated § 279.7 as follows:

a. Paragraph (a) is amended by removing the regulatory reference ''§ 279.8(e)'' and adding in its place the regulatory reference ''§ 279.5(e)''.

b. Paragraph (b) is amended by removing the words the ''officer or''.

Dated: November 14, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–29889 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–20]

Amendment of Class D Airspace, White Plains, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class D airspace at White Plains, NY. Controlled airspace extending upward from the surface is needed to contain aircraft executing Instrument Flight Rule (IFR) procedures

and provide a safer operating environment. This action would increase the limits of the existing Class D airspace by an extension along the runway 34 approach course.

DATES: Comments must be received on or before December 20, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–20, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4890. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809: telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AEA–20''. The postcard will be date\time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace for Instrument Flight Rules (IFR) procedures at Westchester County Airport, White Plains, NY. This action would provide additional Class D Airspace extending two additional miles along the southeast and northwest localizer courses for Westchester County Airport up to but not including 3,000 feet to accommodate IFR operations using Runway 34.

Class D airspace designations for airspace areas extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K dated August 30, 2002, and effective September 16, 2002, is proposed to be amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

* * * * *

AEA NY D White Plains, NY

Westchester County Airport, White Plains, NY
(Lat. 41°04′01″ N., long. 73°42′27″ W.)
Westchester County ILS Localizer Northwest
(Lat. 41°03′27″ N., long. 73°41′58″ W.)
Westchester County ILS Localizer Southeast
(Lat. 41°04′37″ N., long. 73°42′52″ W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.1 mile radius of Westchester County Airport and within 1.5 miles each side of the Westchester County ILS northwest localizer course extending from the 4.1 mile radius to 6.1 miles northwest of the airport and within 1.5 miles each side of the Westchester County ILS southeast localizer course extending from the 4.1 mile radius to 6.1 miles southeast of the airport. This Class D airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on November 7, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–29904 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AEA–21]

Establishment of Class E Airspace; William T. Piper Memorial Airport, Lock Haven, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at William T. Piper Memorial Airport (LHV), Lock Haven, PA. The development of a Standard Instrument Approach Procedure (SIAP) to serve flights operating into William T. Piper Memorial Airport under Instrument Flight Rules (IFR) makes this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before December 26, 2002.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Airspace Branch, AEA–520, Docket No. 02–AEA–21, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basic supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AEA–21''. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY, 11434–4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Regulations (14 CFR part 71) to establish Class E airspace area at Lock Haven, PA. The development of a SIAP to serve flights operating IFR into the William T. Piper Memorial Airport makes this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K dated August 30, 2002 and effective September 16, 2002, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, Lock Haven [NEW]

William T. Piper Memorial Airport
(Lat. 41°08′09″ N., long. 77°25′24″ W.)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of William T. Piper Memorial Airport.

* * * * *

Issued in Jamaica, New York on November 7, 2002.

F.D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 02–29903 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 902

[NCPPC 102]

Dispute Adjudication Procedures

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Proposed rule.

SUMMARY: The Compact Council established pursuant to the National Crime Prevention and Privacy Compact (Compact) is publishing a rule proposing to establish Dispute Adjudication Procedures. These procedures support Article XI of the Compact.

DATE: Submit comments on or before December 26, 2002.

ADDRESSES: Send all written comments concerning this proposed rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Cathy L. Morrison. Comments may also be submitted by fax at (304)625–5388 or by electronic mail at *cmorriso@leo.gov.* To ensure proper handling, please reference ''Dispute Adjudication'' on your correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbur Rehmann, Compact Council Chairman, Montana Department of Justice, 303 North Roberts, 4th Floor, Post Office Box 201406, Helena, Montana 59620–1406, telephone number (406) 444–6194.

SUPPLEMENTARY INFORMATION: The National Crime Prevention and Privacy Compact, 42 U.S.C. 14611–14616, establishes uniform standards and processes for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes. The Compact was signed into law on October 9, 1998, (Pub. L. 105–251) and became effective on April 28, 1999, when ratified by the second state. The Compact eliminates barriers to the sharing of criminal history record information among the compact parties for noncriminal justice purposes. Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

This proposed rule establishes Dispute Adjudication Procedures authorized under Article XI of the Compact. Article XI provides generally for the adjudication of disputes relating to the Compact and this rule provides a structured framework for the Council to efficiently and effectively implement the adjudication process.

Section 902.2(a) of the proposed rule provides that cognizable disputes may only be raised by a person or organization directly aggrieved by: (1) The Council's interpretation of the Compact; (2) any rule or standard established by the Council pursuant to the Compact; or (3) failure of a Compact Party to comply with a provision of the Compact or with any rule or standard established by the Council. Limiting disputes to those who are ''directly aggrieved'' by Council or Compact Party actions ensures that Council resources are devoted to reviewing substantive matters relating to direct Council or Compact Party actions and that standing is provided only to a person or organization substantially impacted by relevant actions of the Compact Council or a Compact Party.

Section 902.2(d) of the proposed rule provides that a dispute may not be based solely upon a disagreement with the merits of a rule or standard established by the Council. If a rule has been established by the Council, the Council has provided an opportunity for comments through the publishing of a proposed rule, has debated the merits and wisdom of the rule at meetings open to the public, and has determined that the rule should be enacted. Prior public notice is given in the **Federal Register** of each Council meeting, including the matters to be addressed at the meeting. Therefore, the public will have prior notice of the proposed rules to be discussed by the Council and will have an opportunity to comment on the merits of the proposed rules. Accordingly, prohibiting disputes based on the merits or wisdom of a Council rule ensures that Council time and resources are not spent adjudicating disputes in matters in which the Council has already invested significant time and effort and on which interested parties have had ample opportunity to comment. However, while a formal dispute on the merits of a rule may not be raised under these procedures, nothing prevents further discussion of the merits of the rule or efforts seeking its revocation at regularly scheduled Council meetings.

Section 902.3 of the proposed rule provides that disputes are preliminarily referred to the Council's Dispute Resolution Committee for a recommendation to the Council Chairman regarding whether a hearing should be held on the matter. Creating and utilizing a Dispute Resolution Committee enhances efficiency by having a small group assess pertinent information and make recommendations to the Chairman and full Council.

The hearing procedures provided for in the proposed rule ensure that disputants, as well as Compact Parties charged with violating Council rules, are given a full and fair opportunity to present matters to the Council both orally and in writing. Due to the Council's historically busy agenda and the costs involved in assembling the 15-member Council and its administrative support, the Council Chairman may limit the number of and the length of time allowed to presenters or witnesses. The Chairman also maintains the discretion to limit input, both orally and in writing, of other persons or organizations who may wish to participate in an adjudication proceeding.

Given the affected interests of the Compact Council, the proposed rule requires that appropriate notice of an appeal under Article XI be communicated to the Council Chairman by the appealing party to ensure that timely notice is provided to Council members and other appropriate individuals.

Administrative Procedures and Executive Orders

Administrative Procedures Act

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate/federal state compact which was approved and enacted into legislation by Congress pursuant to Pub. L. 105–251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives), and is authorized by the Compact to promulgate rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes. The Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council shall be published in the **Federal Register**. *See* 42 U.S.C. 14616, Articles II(4), VI(a)(1) and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801–804) is not applicable to the Council's rule because the Compact Council is not a ''Federal agency'' as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. *See* 5 U.S.C. 804.

List of Subjects in 28 CFR Part 902

Administrative practice and procedure, National Crime Prevention and Privacy Compact Council.

Accordingly, chapter IX of title 28 Code of Federal Regulations is amended by adding part 902 to read as follows:

PART 902—DISPUTE ADJUDICATION PROCEDURES

Sec.
902.1 Purpose and authority.
902.2 Raising disputes.
902.3 Referral to Dispute Resolution Committee.
902.4 Action by Council Chairman.
902.5 Hearing procedures.
902.6 Appeal to the Attorney General.
902.7 Court action.

Authority: 42 U.S.C. 14616.

§ 902.1 Purpose and authority.

The purpose of this part 902 is to establish protocols and procedures for the adjudication of disputes by the Compact Council. The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616.

§ 902.2 Raising disputes.

(a) Cognizable disputes must be raised by a Party State, the FBI, or a person, organization, or government entity directly aggrieved within the meaning of paragraph (b) of this section and may be based upon:

(1) A claim that the Council has misinterpreted the Compact or one of the Council's rules or standards established under Article VI of the Compact;

(2) A claim that the Council has exceeded its authority under the Compact;

(3) A claim that in establishing a rule or standard or in taking other action, the Council has failed to comply with its bylaws or other applicable procedures established by the Council; or the rule, standard or action is not otherwise in accordance with applicable law; or

(4) A claim by a Compact Party that another Compact Party has failed to comply with a provision of the Compact or with any rule or standard established by the Council.

(b) A Party State, the FBI, or a person, organization, or government entity directly aggrieved by the Council's interpretation of the Compact or any rule or standard established by the Council pursuant to the Compact, or in connection with a matter covered under § 902.2(a)(4), may request a hearing on a dispute by contacting the Compact Council Chairman in writing at the Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

(c) The Chairman may ask the requester for more particulars, supporting documentation or materials as the circumstances warrant.

(d) A dispute may not be based solely upon a disagreement with the merits (substantive wisdom or advisability) of a rule or standard validly established by the Council within the scope of its authority under the Compact. However, nothing in this rule prohibits further discussion of the merits of a rule or standard at any regularly scheduled Council meeting.

§ 902.3 Referral to Dispute Resolution Committee.

(a) The five person Dispute Resolution Committee membership shall be determined according to Compact Article VI (g). Should a dispute arise with an apparent conflict of interest between the disputant and a Committee member, the Committee member shall recuse himself/herself and the Compact Council Chairman shall determine an appropriate substitute for that particular dispute.

(b) The Compact Council Chairman shall refer the dispute, together with all supporting documents and materials, to the Council's Dispute Resolution Committee.

(c) In making a decision as to whether to recommend a hearing, the Dispute Resolution Committee shall lean toward recommending hearings to all disputants who raise issues that are not clearly frivolous or without merit.

(d) The Dispute Resolution Committee shall consider the matter and:

(1) Refer it to the Council for a hearing;

(2) Recommend that the Council deny a hearing if the Committee concludes that the matter does not constitute a cognizable dispute under § 902.2(a); or

(3) Request more information from the person or organization raising the dispute or from other persons or organizations.

§ 902.4 Action by Council Chairman.

(a) The Chairman shall communicate the decision of the Dispute Resolution Committee to the person or organization that raised the dispute.

(b) If a hearing is not granted, the Federal Bureau of Investigation or a Party State may appeal this decision to the Attorney General pursuant to Section (c) of Article XI of the Compact (see § 902.6).

(c) If a hearing is granted, the Chairman shall:

(1) Include the dispute on the agenda of a scheduled meeting of the Council or, at the Chairman's discretion, schedule a special Council meeting;

(2) Notify the person or organization raising the dispute as to the date of the hearing and the rights of disputants under § 902.5 (Hearing Procedures); and

(3) Include the matter of the dispute in the prior public notice of the Council meeting required by Article VI (d)(1) of the Compact.

§ 902.5 Hearing procedures.

(a) The hearing shall be open to the public pursuant to Article VI (d)(1) of the Compact.

(b) The Council Chairman or his/her designee shall preside over the hearing and may limit the number of, and the length of time allowed to, presenters or witnesses.

(c) The person or organization raising the dispute or a Compact Party charged under the provisions of § 902.2(a)(4) shall be entitled to:

(1) File additional written materials with the Council at least ten days prior to the hearing;

(2) Appear at the hearing, in person and/or by counsel;

(3) Make an oral presentation; and

(4) Call witnesses.

(d) Subject to the discretion of the Chairman, other persons and organizations may be permitted to appear and make oral presentations at the hearing or provide written materials to the Council concerning the dispute.

(e) All Council members, including a member or members who raised the dispute that is the subject of the hearing, shall be entitled to participate fully in the hearing and vote on the final Council decision concerning the dispute.

(f) The Council shall, if necessary, continue the hearing to a subsequent Council meeting.

(g) Summary minutes of the hearing shall be made and transcribed and shall be available for inspection by any person at the Council office within the Federal Bureau of Investigation.

(h) The proceedings of the hearing shall be recorded and shall be transcribed, as necessary. A record of the proceedings will be made and provided to the Attorney General if an appeal is filed pursuant to section (c) of Article XI of the Compact.

(i) The Council's decision on the dispute shall be based upon a majority vote of Council members or their proxies present and voting at the hearing. The Council's decision on the dispute shall be published in the **Federal Register** as provided by section (a)(2) of Article XI and section (e) of Article VI.

(j) The Council Chairman shall advise Council members and hearing participants of the right of appeal provided by section (c) of Article XI of the Compact.

§ 902.6 Appeal to the Attorney General.

(a) The Federal Bureau of Investigation or a Compact Party State may appeal the decision of the Council to the U.S. Attorney General pursuant to section (c) of Article XI of the Compact.

(b) Appeals shall be filed and conducted pursuant to rules and procedures that may be established by the Attorney General.

(c) Appropriate notice of an appeal shall be communicated to the Council Chairman by the appealing party.

§ 902.7 Court action.

Pursuant to section (c) of Article XI of the Compact, a decision by the Attorney General on an appeal under § 902.6 may be appealed by filing a suit seeking to have the decision reversed in the appropriate district court of the United States.

Dated: November 1, 2002.

Wilbur Rehmann,

Compact Council Chairman.

[FR Doc. 02–29709 Filed 11–22–02; 8:45 am]

BILLING CODE 4410–02–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

RIN 3076AA09

Arbitration Schedule of Fees

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule.

SUMMARY: The Federal Mediation and Conciliation Service is proposing to revise the Appendix to 29 CFR Part 1404 to replace the fee schedule item for processing requests for panels of arbitrators with two new fee schedule categories—one for processing requests on-line and the other for requests which require processing by FMCS staff. In addition, FMCS proposes to increase the rates for requests which require staff processing and for requests for lists and biographic sketches of arbitrators.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 24, 2003.

ADDRESSES: Send comments to Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427 or by fax to (202) 606–3749. *See* **SUPPLEMENTARY INFORMATION** for other information concerning comments.

Submit copies of electronic comments to *vtraynham@fmcs.gov.* See **SUPPLEMENTARY INFORMATION** for other information concerning electronic filing.

FOR FURTHER INFORAMTION CONTACT: Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone, (202) 606–5111; Fax (202) 606–3749.

SUPPLEMENTARY INFORMATION: In this rulemaking, FMCS proposes to amend its regulations in the Appendix to 29 CFR part 1404 by replacing the general category on the fee schedule for requests for panels with two new categories, one for processing electronic requests for panels and the other for requests which require processing by FMCS staff.

Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS offers panels of arbitrators for selection by labor and management to resolve grievances and disagreements arising under their collective bargaining agreements and to deal with fact finding and interest arbitration issues as well. On October 1, 1997, the Office of Arbitration Services (OAS) began charging a nominal fee for all requests for panels, lists and other major services. FMCS now proposes to amend the Appendix to 29 CFR part 1404 by adding a new category on the fee schedule for electronic requests and to increase the fees in other categories to take into account increases in the costs of processing the requests.

In May 2000, the OAS developed its electronic system to issue panels of arbitrators. Since the inception of the on-line system, nearly 500 labor and/or management representatives have utilized this on-line system, thereby reducing the time period for them to receive panels of arbitrators. The on-line system permits the parties to receive panels almost instantly—by fax, e-mail or mail. Ninety percent of all electronic requests are either faxed or e-mailed to the parties.

To encourage the use of electronic processing and receipt of panels, OAS is adding an entry on its fee schedule for on-line processing of panel requests. The on-line processing category will maintain the costs for this service at the fee of $30.00—the amount currently in effect for all requests for panels of arbitrators—since the costs for electronic processing have not significantly increased.

The proposed revision to the arbitration fee schedule in the Appendix to 29 CFR part 1404 would create another category for requests that have to be processed by FMCS staff. FMCS proposes to increase the fees in this category from the current $30.00 to $50.00 for each panel. The increase in cost is based on several factors. The complexity of the requests received and processed by the staff in OAS has increased greatly. Parties are requesting more than the standard seven names on a panel, and they are requesting multiple panels with up to 15 names on each panel that require manual exclusions, based on a collective bargaining agreement. As a result, the staff time to process these requests has increased, as well as the cost to mail the panels. In addition, several increases in postage have occurred since the agency began charging for panels in October 1997.

Finally, FMCS proposes to revise the Appendix to 29 CFR part 1404 by increasing the cost for lists and biographical sketches of arbitrators in specific areas from $10.00 per request

plus $.10 per page to $25.00 per request and $.25 per page. All other fees in the Appendix would remain the same.

Access to Information in Comments

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as ''CBI.'' Information so marked will not be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. FMCS may disclose information not marked confidential without prior notice. All written comments will be available for inspection in Room 704 at the Washington, DC address above from 8:30 am to 4:30 pm, Monday through Friday, excluding legal holidays.

Electronic Access and Filing

All comments and data in electronic form must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail.

Regulatory Flexibility Act

The Director, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The fees assessed by FMCS for requests for panels are nominal and should not cause any significant economic effect on small entities which may request arbitration panels..

Executive Order 12866

This regulation has been deemed significant under Section 3(f)(3) of Executive Order 12866 and as such has been submitted to and reviewed by the Office of Management and Budget.

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 $100,000,000 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 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 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.

List of Subjects in 29 CFR Part 1404

Arbitration, Arbitration fees.

For the reasons set forth in the preamble, FMCS proposes to amend the Appendix to 29 CFR part 1404 as follows:

PART 1404—ARBITRATION SERVICES

1. The authority citation for part 1404 continues to read as follows:

Authority: 29 U.S.C. 172 and 29 U.S.C. 173 *et seq.*

2. Appendix to part 1404 is revised to read as follows:

Appendix to Part 1404—Arbitration Policy; Schedule of Fees

Annual listing fee for all arbitrators—$100 for the first address; $50 for the second address

Request for panel of arbitrators processed by FMCS staff—$50.00

Request for panel of arbitrators processed on-line—$30.00

Direct appointment of an arbitrator when a panel is not used—$20.00 per appointment

List and biographic sketches of arbitrators in a specific area—$25.00 per request plus $.25 per page.

John J. Toner,

Chief of Staff.

[FR Doc. 02–29481 Filed 11–22–02; 8:45 am]

BILLING CODE 6372–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–2277–06; I.D. 101802B]

RIN 0648–AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Regulations Governing Northeast Multispecies and Monkfish Days-at-Sea

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

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS proposes a regulatory amendment that would revise the monkfish days-at-sea (DAS) regulations found at 50 CFR part 648 in order to provide vessels possessing limited access Category C or D monkfish permits the opportunity to fish their full allocation of up to 40 monkfish DAS, regardless of the amount of Northeast (NE) multispecies DAS available to an individual vessel as of August 1, 2002. These regulations were modified as part of a August 1, 2002, interim final rule implementing the Settlement Agreement Among Certain Parties (Settlement Agreement), ordered by the U.S. District Court for the District of Columbia in a Remedial Order issued on May 23, 2002. However, the August 1, 2002, interim final rule unintentionally restricted monkfish DAS allocated under the Monkfish Fishery Management Plan (Monkfish FMP) for limited access Category C or D monkfish vessels that used NE multispecies DAS not in conjunction with a monkfish DAS, during May through July, 2002. This regulatory amendment would also revise ambiguous language to clarify that a vessel fishing under a Southern New England (SNE) and Mid-Atlantic (MA) Yellowtail Flounder Possession/Landing Letter of Authorization (LOA) may fish in the Gulf of Maine (GOM) or Georges Bank (GB) Regulated Mesh Areas (RMAs), provided the vessel abides by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat.

DATES: Public comments must be received on or before December 10, 2002.

ADDRESSES: Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on regulatory amendment.'' Comments may also be submitted via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Regulatory Impact Review (RIR) prepared for this action are available from the Regional Administrator. The document is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, phone: 978–281–9103, fax: 978–281–9135, e-mail: *Allison.Ferreira@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

NMFS published an interim final rule on August 1, 2002 (67 FR 50292), to reduce overfishing consistent with and pursuant to section 305(c)(3) of the Magnuson-Stevens Fishery Conservation and Management Act, while Amendment 13 to the Northeast Multispecies Fishery Management Plan is being developed. Under the provisions of section 305(c)(3) of the Magnuson-Stevens Act, interim measures shall remain in effect for not more than 180 days after the date of publication, and may be extended by publication in the **Federal Register** for one additional period of not more than 180 days, provided that the public has had an opportunity to comment on the interim measures. Because of the Court's Remedial Order, it is very likely that NMFS will extend the interim final rule beyond the first 180–day period. NMFS will announce any extension by publishing a notification in the **Federal Register**. Because this proposed rule will amend the August 1, 2002, interim rule, this proposed rule, if approved and implemented by NMFS, will remain in effect for the duration of the August 1, 2002, interim final rule, including any extensions.

The August 1, 2002, interim final rule implemented additional measures intended to reduce overfishing on species managed under the NE Multispecies Fishery Management Plan as specified in the Settlement Agreement, including a freeze on the use of DAS and a 20–percent reduction in effort from the highest amount of DAS fished during the fishing years 1996–2000. Under the monkfish DAS regulations implemented through the Monkfish FMP (64 FR 54732, October 7, 1999), all limited access monkfish vessels are allocated up to 40 monkfish DAS per fishing year (May 1 through April 30). Vessels that hold a limited access monkfish Category C or D permit (*i.e.*, vessels that possess both a limited access monkfish and limited access NE multispecies DAS permit) must run both their monkfish DAS clock and their NE multispecies DAS clock concurrently when fishing under a monkfish DAS. Limited access monkfish vessels that do not have a limited access NE multispecies permit (*i.e.*, Category A and B vessels) may fish their monkfish-only DAS in a fishery exempted under the 5–percent regulated multispecies bycatch provisions. Implementation of the freeze and reduction in DAS without regard for monkfish DAS, however, have restricted certain limited access monkfish vessels to fishing only the number of monkfish DAS equivalent to the number of NE multispecies DAS allocated under the August 1, 2002, interim final rule, minus the NE multispecies DAS fished during May - July, 2002. There was no intent specified in the Settlement Agreement to further restrict monkfish harvest through DAS or other measures, when NMFS revised § 648.92(b)(2) in the August 1, 2002, interim final rule. Therefore, NMFS intended to enable limited access Category C or D monkfish vessels to fish their full allocations of 40 DAS.

The August 1, 2002, interim final rule, as currently written, specifies that Category C or D monkfish vessels that have been allocated fewer than 40 NE multispecies DAS may fish, as monkfish-only DAS, those monkfish DAS equal to the difference between their NE multispecies DAS allocation and their monkfish DAS allocation for the fishing year May 1 through April 30. However, this does not account for those vessels that used NE multispecies DAS prior to August 1, 2002, and, as a result, had fewer unused NE multispecies than unused monkfish DAS as of August 1, 2002. This omission was recognized by NMFS shortly after implementation of the August 1, 2002, interim final rule. Because such vessels would not be provided the opportunity to fish their full 40 monkfish DAS allocations for the 2002 fishing year, NMFS is proposing this regulatory amendment to revise § .92(b)(2). This proposed regulatory amendment would enable Category C or D monkfish vessels to fish their monkfish DAS that were unused as of August 1, 2002, regardless of how many NE multispecies DAS are available to them. Therefore, for the 2002 fishing year, this regulatory amendment would authorize a vessel to fish its monkfish-only DAS (i.e., monkfish DAS that do not have to be fished concurrently with a NE multispecies DAS) equal to the difference between the number of its unused monkfish DAS and its unused NE multispecies DAS as of August 1, 2002, in addition to the unused monkfish DAS associated with the vessel's unused NE multispecies DAS as of August 1, 2002. An example of how the monkfish-only DAS are calculated under the current interim rule versus this proposed regulatory amendment for the 2002 fishing year follows.

Under the Current Interim Rule - For this example, a vessel was allocated 20 NE multispecies DAS pursuant to the August 1, 2002, interim rule. The vessel used 10 NE multispecies DAS from May 1 - July 31, 2002, but did not use any monkfish DAS. Under the August 1, 2002, interim rule calculation, the vessel can fish, as monkfish-only DAS, the difference between 40 (monkfish DAS) and the number of NE multispecies DAS allocated. In this case, the resulting number is 20 monkfish-only DAS (40 monkfish DAS - 20 allocated NE multispecies DAS = 20 monkfish-only DAS). However, because the vessel has only 10 unused NE multispecies DAS, it can only fish 10 of the remaining 20 monkfish DAS (which must be linked to NE multispecies DAS), plus the 20 monkfish-only DAS. Therefore, the vessel can use only 30 monkfish DAS out of its 40 allocated monkfish DAS for the 2002 fishing year under the August 1, 2002, interim final rule.

Under the Proposed Regulatory Amendment - Under this proposed regulatory amendment, assuming the same facts as above, the calculation of monkfish-only DAS would be based on the difference between the vessel's unused monkfish DAS and its unused NE multispecies DAS as of August 1, 2002. This would result in 30 monkfish-only DAS (40 unused monkfish DAS - 10 unused multispecies DAS = 30 monkfish-only DAS). The vessel could also fish an additional 10 monkfish DAS in combination with its 10 unused multispecies DAS, for a total of 40 monkfish DAS available for the 2002 fishing year.

This example, and the calculations of monkfish-only DAS under the August 1, 2002, interim final rule and this regulatory amendment are also illustrated in Table 1.

TABLE 1. CALCULATION OF MONKFISH-ONLY DAS UNDER INTERIM FINAL RULE AND PROPOSED REGULATORY AMENDMENT.

A	B	C	D	E	F	G	H
Monkfish DAS Allocated	Monkfish DAS used	Mult. DAS Allocated	Mult. DAS Used	Unused Monkfish DAS	Unused Mult. DAS	Monkfish only DAS	Total Monkfish DAS Available for 2002 FY
August 1, 2002, Interim Final Rule							

TABLE 1. CALCULATION OF MONKFISH-ONLY DAS UNDER INTERIM FINAL RULE AND PROPOSED REGULATORY AMENDMENT.—Continued

A	B	C	D	E	F	G	H
40	0	20	10	40 (A - B)	10 (C - D)	20 (A - C)	30 (F + G)
Proposed Regulatory Amendment							
40	0	20	10	40 (A - B)	10 (C - D)	30 (E - F)	40 (F + G)

As under the current interim rule, vessels would be required to fish their monkfish-only DAS under the same provisions as limited access monkfish Category A and B vessels under these proposed regulations. Limited access monkfish Category A and B vessels are required to fish their monkfish DAS in an existing monkfish exempted fishery, which are specified under § 648.81. A map of these exemption areas is also available from the Northeast Regional Office of NMFS (*see* contact information).

This regulatory amendment would not apply to the 2003 fishing year. For the 2003 fishing year, vessels that have been allocated fewer NE multispecies DAS than monkfish DAS would fish the difference in DAS as monkfish-only DAS, as stipulated in the August 1, 2002, interim final rule.

This regulatory amendment would also revise ambiguous language at § 648.86(h)(2) (ii) to clarify that a vessel fishing under a SNE and MA Yellowtail Flounder Possession/Landing LOA may fish in the GOM or GB RMAs, provided the vessel abides by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat. Existing regulations authorize vessels that possess a SNE and MA Yellowtail Flounder Possession/Landing LOA to transit the GOM and GB RMAs, if the gear is stowed properly on board the vessel. However, this regulation neither prohibits nor allows such vessels to fish in the GOM or GB RMAs under the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs. The intent of the August 1, 2002, interim final rule was to allow vessels possessing a SNE and MA Yellowtail Flounder Possession/Landing LOA to fish any part of a trip in the GOM or GB RMAs, provided that they abide by the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat. Therefore, this proposed regulatory amendment would revise the language at § 648.86(h)(2)(ii) to clarify that vessels possessing a SNE and MA Yellowtail Flounder Possession/Landing LOA may fish in the GOM or GB RMAs under the more restrictive yellowtail possession limits of the SNE and MA RMAs.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulatory amendment would impact those vessels possessing a limited access Category C or D monkfish permit that had fewer NE multispecies DAS than monkfish DAS as of August 1, 2002. Currently, there are 651 vessels that hold a limited access Category C or D monkfish permit, all of which are considered to be small entities. However, an analysis of NMFS' DAS database shows that only 141 vessels had fewer monkfish DAS than NE multispecies DAS remaining as of August 1, 2002, and therefore would be impacted by this proposed action. These 141 vessels would be allocated a total of 2,700 monkfish-only DAS; DAS that could be fished separate from a NE multispecies DAS, once a vessel's NE multispecies DAS have been utilized. The current interim rule impacts 121 vessels that have been allocated fewer monkfish DAS than NE multispecies DAS for the 2002 fishing year. These 121 vessels have been allocated a total of 2,200 monkfish-only DAS. Therefore, this proposed rule would provide approximately 20 additional vessels with the opportunity to utilize their full allocation of 40 monkfish DAS during the 2002 fishing year. The additional number of vessels impacted by this action is not considered to be substantial.

This proposed rule may also impact all vessels that hold a limited access NE multispecies permit, since it clarifies existing regulations concerning yellowtail flounder possession restrictions. There are currently 1,363 vessels that possess a limited access NE multispecies permit. These vessels might realize a slight positive impact, since it would be clear in the regulations that they could fish in the GOM and GB RMAs while in possession of a SNE and MA Yellowtail Flounder Possession/Landing LOA, but under the more restrictive yellowtail flounder possession limits of the SNE and MA RMAs north of 40°00' N. lat.

The proposed regulatory amendment will result in increased revenues to vessels participating in the directed monkfish fishery without increasing costs. Therefore, this regulation does not significantly reduce profit for a substantial number of small entities. Furthermore, the objective of the proposed regulatory amendment is to provide all limited access monkfish vessels with equal opportunity to use their full annual allocation of 40 monkfish DAS. As a result, this action will not affect small entities disproportionally, nor will it lessen their long-term profitability. In summary, this proposed regulatory amendment makes only minor revisions to the August 1, 2002, interim final rule. Therefore, a regulatory flexibility analysis was not prepared.

This proposed rule does not duplicate, overlap or conflict with other Federal rules, and does not contain new reporting or recordkeeping requirements. This proposed rule also takes into consideration the monkfish regulations under § 648.92 in order to be consistent with the objectives of the Monkfish FMP.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements

Dated: November 19, 2002.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.86, paragraph (h)(2) (ii) is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(h) * * *

(2) * * *

(ii) The vessel does not fish south of 40°00' N. lat. for a minimum of 30 consecutive days (when fishing under the NE multispecies DAS program, or under the monkfish DAS program if the vessel is fishing under the limited access monkfish Category C or D provisions). Vessels subject to these restrictions may fish any portion of a trip in the GOM and GB Regulated Mesh Areas, provided the vessel complies with the possession restrictions specified under this paragraph (h). Vessels subject to these restrictions may also transit the SNE and MA Regulated Mesh Areas south of 40°00' N. lat., provided the gear is stowed in accordance with one of the provisions of § 648.23(b).

* * * * *

3. In § 648.92, paragraph (b)(2) is revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) Category C and D limited access monkfish permit holders. (i) August 1, 2002 - April 30, 2003. Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable, unless otherwise specified in this paragraph (b). A Category C or D vessel that had fewer unused multispecies DAS than unused monkfish DAS as of August 1, 2002, may fish under the limited access monkfish provisions for Category A or B vessels, as applicable, for the number of DAS that equal the difference between its unused monkfish DAS and unused multispecies DAS as of August 1, 2002. For such vessels, when the total allocation of multispecies DAS has been used, a monkfish DAS may be used without concurrent use of a multispecies DAS. (For example, if a monkfish Category D vessel has 10 NE multispecies DAS and 40 monkfish DAS remaining as of August 1, 2002, that vessel may use the remaining 30 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, once the remaining 10 NE multispecies DAS have been utilized. However, the vessel must fish the remaining 30 monkfish DAS under the regulations pertaining to a Category B vessel, and must not retain any regulated multispecies.)

(ii) Beginning May 1, 2003. Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of multispecies DAS under § 648.82(l) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated multispecies DAS. For such vessels, when the total allocation of multispecies DAS have been used, a monkfish DAS may be used without concurrent use of a multispecies DAS. (For example, if a monkfish Category D vessel's multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 multispecies DAS would also be used. However, after all 30 multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated multispecies.)

* * * * *

[FR Doc. 02–29895 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021112272–2272–01; I.D. 110202D]

RIN 0648–AP88

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast for the fishing season January 1, 2003, through December 31, 2003. This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

DATES: Comments must be received by December 10, 2002.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. The report *Stock Assessment of Pacific Sardine with Management Recommendations for 2003* may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, 562–980–4036.

SUPPLEMENTARY INFORMATION: The FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, and then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 and ends on December 31 of each year.

The CPS Team, Subpanel, and SSC meetings as described above were held as in the past. The Team meeting took place at the Southwest Regional Office in Long Beach, CA, on October 8, 2002. A public meeting between the Team and the Subpanel was held at the same location that afternoon. The Council reviewed the report at its October-

November meeting in Foster City, CA, when it heard comments from its advisory bodies and the public.

Based on a biomass estimate of 999,871 metric tons (mt), the harvest guideline for Pacific sardine for January 1, 2003, through December 31, 2003, is 110,908 mt. The biomass estimate is slightly lower than last year's estimate; however, this year's biomass is not statistically different from those estimates calculated in the past. Nevertheless, estimates from recent years suggest that the rapid growth of the biomass observed since 1983 is leveling off.

The harvest guideline is allocated one-third for Subarea A, which is north of 35°40′ N. lat. (Pt. Piedras Blancas, CA) to the Canadian border, and two-thirds for Subarea B, which is south of 35°′ N. lat. to the Mexican border. Under this proposed rule, the northern allocation for 2003 would be 36,969 mt; the southern allocation would be 73,939 mt. In 2002, the northern allocation was 39,481 mt and the southern allocation was 78,961 mt.

Normally, an incidental landing allowance of sardine in landings of other CPS is set at the beginning of the fishing season. The incidental allowance would become effective if the harvest guideline is reached and the fishery closed. A landing allowance of sardine up to 45 percent by weight of any landing of CPS is authorized by the FMP. An incidental allowance prevents fishermen from being cited for a violation when sardine occur in schools of other CPS, and it minimizes bycatch of sardine if sardine are inadvertently caught while fishing for other CPS. Sardine landed with other species also requires sorting at the processing plant, which adds to processing costs. Mixed species in the same load may damage smaller fish. The Subpanel discussed this issue and noted that the fish off Oregon and Washington, both sardine and mackerel, are generally larger than the fish off southern California and markets differ in the two areas; therefore, deciding what the allowance should be for the entire fishery was difficult. The Subpanel did not agree on an appropriate allowance. Public comment is sought on this issue.

The sardine population was estimated using a modified version of the integrated stock assessment model called Catch at Age Analysis of Sardine Two Area Model (CANSAR TAM). CANSAR-TAM is a forward-casting, age-structured analysis using fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 2002. The modification of CANSAR-TAM was developed to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast. Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Sardine with Management Recommendations for 2003* (see **ADDRESSES**).

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of age one sardine and above*. For 2003, this estimate is 999,871 mt.

2. *The cutoff*. This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *The portion of the sardine biomass that is in U.S. waters*. For 2003, this estimate is 87 percent, based on the average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters.

4. *The harvest fraction*. This is the percentage of the biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures. A higher fraction is used for warmer ocean temperatures, which favor the production of Pacific sardine, and a lower fraction is used for cooler temperatures. For 2003, the fraction was 15 percent based on three seasons of sea surface temperature at Scripps Pier, California.

Based on the estimated biomass of 999,871 mt and the formula in the FMP, a harvest guideline of 110,908 mt was determined for the fishery beginning January 1, 2003. The harvest guideline is allocated one-third for Subarea A, which is north of 35°40′ N. lat. (Pt. Piedras Blancas, California) to the Canadian border, and two-thirds for Subarea B, which is south of 35°40′ N. lat. to the Mexican border. The northern allocation is 36,969 mt; the southern allocation is 73,939 mt.

Classification

These proposed specifications are issued under the authority of, and are in accordance with, the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and 50 CFR part 660 subpart I (the regulations implementing the FMP).

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

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

The harvest guideline is lower than those of recent years; however, the harvest guideline has not been achieved in recent years. From 1999 through 2001, landings were 60,000 mt, 72,000 mt, and 77,000 mt respectively. Landings are likely to reach 86,000 mt in 2002. Based on the landings estimate of approximately 86,000 mt for 2002 and the 2002 harvest guideline of 118,442, approximately 32,000 mt is likely to remain unharvested by the end of 2002. Accordingly, vessels and processors will not be economically impacted because there is sufficient resource available to satisfy all available markets. Although markets have expanded for this resource, from 1999 through 2001, 17,000 mt, 50,000 mt, and 59,000 mt has gone unharvested. Real ex-vessel revenue per ton has increased as well as total ex-vessel revenue, which suggests a growing diversity in markets.

Hence, implementation of these specifications would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis for this rule has been prepared.

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

Dated: November 20, 2002.

Rebecca Lent,

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

[FR Doc. 02–29894 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 227
Monday, November 25, 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

Clarification of Language in the 1994 Record of Decision for the Northwest Forest Plan; National Forests and Bureau of Land Management Districts Within the Range of the Northern Spotted Owl; Western Oregon and Washington, and Northwestern California

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of intent to prepare a supplement to a final environmental impact statement.

SUMMARY: The Forest Service and the Bureau of Land Management (BLM) (collectively the Agencies) will prepare and consider a supplemental environmental impact statement (SEIS) on a proposal to amend the Record of Decision for the Northwest Forest Plan, which was signed on April 13, 1994. Specifically, this proposed action will make the Aquatic Conservation Strategy (ACS) in the Record of Decision consistent with the original intent of the report prepared by the Forest Ecosystem Management Assessment Team, entitled ''Forest Ecosystem Management: An Ecological, Economic, and Social Assessment Report of the Forest Ecosystem Management Assessment Team (FEMAT Report).'' The proposed action would amend land and resource management plans for National Forests and BLM Districts within the range of the northern spotted owl (generally western Oregon and Washington, and northwestern California).

The Forest Service and BLM will be joint lead agencies for this proposal. The two Agencies will consult as appropriate with the U.S. Fish and Wildlife Service and National Oceanographic and Atmospheric Administration Fisheries (NOAA Fisheries), pursuant to the Endangered Species Act (ESA). Other Federal agencies may also be involved, including the Forest Service's Pacific Northwest and Pacific Southwest Research Stations, Bureau of Indian Affairs, National Park Service, Environmental Protection Agency (EPA), U.S. Army Corps of Engineers, Natural Resources Conservation Service, the U.S. Geological Survey Biological Resources Division, EPA Research Laboratory, and Tribal, local, and state governments. Although the two Agencies have no plans to hold public scoping meetings regarding this proposed action, public comments are invited.

DATES: Comments concerning the scope of the analysis should be received in writing by December 26, 2002.

ADDRESSES: Send written comments concerning this proposal to: Comments, SEIS for Aquatic Conservation Strategy, P.O. Box 2965, Portland, Oregon 97208. Copies of the Record of Decision and Attachment A to the Record of Decision can be obtained electronically at *http://www.reo.gov/library/reports/newsandga.pdf*. Hard copies can be obtained from the Office of Strategic Planning; P.O. Box 3623, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Joyce Casey, SEIS Team Leader, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: The Agencies propose to amend the Aquatic Conservation Strategy (ACS) in Attachment A of the Record of Decision, entitled, ''Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl.'' The ACS was designed to operate over multiple spatial scales, with a focus on the broader scales (watershed and landscape). In recent litigation involving claims under the Endangered Species Act, the Ninth Circuit interpreted the ACS provisions of the Northwest Forest Plan.

In *Pacific Coast Federation of Fishermen's Associations* v. *National Marine Fisheries Service*, 265 F.3d 1028 (9th Cir. 2001) the Ninth Circuit interpreted the ACS provisions as requiring that each project be consistent with the overall ACS at the site-specific scale, rather than simply satisfying the Standards and Guidelines set forth in the Northwest Forest Plan's Record of Decision Attachment A, sections C and D. This interpretation is not what was intended by the Agencies, and makes it nearly impossible to implement any management actions that could have any effect on riparian areas.

The proposed action would replace portions of text in the Record of Decision at pages i, A–6, B–10, and C–1 of Attachment A with text that clearly reflects the Agencies' original intent. The SEIS will disclose the anticipated effects of the proposed action, as well as of the interpretation as stated in the Ninth Circuit's decision. The SEIS will also consider relevant new science since 1994 and Northwest Forest Plan implementation monitoring results.

Adoption of the proposed action would affect National Forest System (NFS) lands and public lands administered by the BLM within the range of the northern spotted owl, generally in western Oregon and Washington, and in northwestern California.

The Record of Decision for this SEIS will amend, for the Forest Service, the following National Forest Land and Resource Management Plans: Gifford Pinchot, Mt. Baker-Snoqualmie, Olympic, Wenatchee and Okanogan National Forests in Washington; Deschutes, Mt. Hood, Rogue River, Siuslaw, Siskiyou, Umpqua, Willamette, and Winema National Forests in Oregon; and Six Rivers, Klamath, Lassen, Mendocino, Modoc, and Shasta-Trinity National Forests in California. The responsible official for NFS lands will be the Secretary of Agriculture.

The Record of Decision for this SEIS will amend, for the Bureau of Land Management, the following Resource Management Plans: Salem, Eugene, Roseburg, Medford, and Coos Bay Districts in Oregon; the Klamath Falls Resource Area of the Lakeview District, also in Oregon; the Arcata, Redding, and Ukiah field offices in California, and also the King Range National Conservation Area Management Plan in the Arcata Resource Area in California. This decision would not apply to the Headwaters area in California, for which a separate management plan is being written. The responsible official for public lands administered by BLM will be the Secretary of the Interior.

Preliminary issues expected to be addressed in the SEIS include: ensuring that the proposed minor changes in

language do not slow the momentum of the Agencies' substantial investment in watershed restoration and aquatic habitat improvement; and whether the proposed action meets all applicable laws and regulations including the Oregon and California Lands Act, the Federal Land Policy and Management Act, the National Forest Management Act, and the Endangered Species Act, and those statutes' implementing regulations.

Although scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)(4)), the Agencies are inviting scoping comments at this time. Comments are sought (1) to help the Agencies identify issues to be addressed in the SEIS; (2) to identify significant issues related to the proposed action; refine the proposed action; (3) to identify reasonable alternatives to the proposed action; and (4) to identify interested and affected persons. For comments to be most useful in this analysis, they should be submitted in writing by the date identified above. To assist the Agencies in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible.

The Agencies have no plans to conduct public scoping meetings. However, a scoping letter will be prepared and circulated to affected Federal, State, and local agencies, affected tribes, and individuals and organizations previously expressing an interest in the ACS.

The draft SEIS is expected to be filed with the EPA in February 2003 and will be available for public review. The comment period on the draft SEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**. It is helpful if comments refer to specific pages or chapters of the draft document. Comments may also address the adequacy of the draft SEIS 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 Agencies believe, 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 the draft SEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft SEIS stage, but that are not raised until after completion of the final SEIS, 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 90-day comment period so that substantive comments and objections are made available to the Agencies at a time when the Agencies can meaningfully consider them and respond to them in the final SEIS.

It is expected that the final SEIS will be filed with the EPA approximately July 2003. The Agencies anticipate there will be a Record of Decision signed in August 2003.

Dated: November 20, 2002.

David P. Tenny,

Deputy Under Secretary, Natural Resource and Environment.

[FR Doc. 02–29951 Filed 11–21–02; 10:33 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Accounting Rules and Guidelines for Forest and Agriculture Greenhouse Gas Offsets

AGENCY: Office of the Chief Economist, Global Change Program Office.

ACTION: Notice of registration for meetings.

SUMMARY: The Department of Agriculture will hold two meetings to solicit input on the accounting rules and guidelines for forest and agriculture greenhouse gas offsets that will be used in the Department of Energy's 1605(b) greenhouse gas reporting system. These meetings will address technical methodological issues associated with preparing estimates of greenhouse gas offsets from agriculture and forestry activities and reporting them under DOE's 1605(b) program.

DATES: The Department will hold the meetings on the following dates:

1. Agriculture Accounting Rules and Guidelines, January 14–15, 2003, 8:30 a.m. to 5 p.m., Riverdale, MD.

2. Forest Accounting Rules and Guidelines, January 23, 2003, 8:30 a.m. to 5 p.m., Riverdale, MD.

ADDRESSES: The workshops will be held at the Department of Agriculture Center located at 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: *Registration Information:* Persons interested in registering for the meetings or in obtaining more information about USDA's efforts to develop accounting rules and guidelines for forest and agriculture greenhouse gas offsets should visit the following web site: *http://www.usda.gov/agency/oce/gcpo/greenhousegasreporting.htm*.

The website will also be used to make available draft and final meeting agendas, information on lodging, and any background papers or other information made available before the meetings.

Technical Information: William Holhenstein, Director, Global Change Program Office, U.S. Department of Agriculture, Room 112–A, Whitten Federal Building, 1400 Independence Avenue, SW., Washington, DC 20250–3810.

(Note: due to precautionary screening of mail to Federal offices, some delays should be expected.)

Logistical Information: Inquiries regarding the logistics for these meetings may be e-mailed to *sharon_barcellos@grad.usda.go*.

SUPPLEMENTARY INFORMATION: On February 14, 2002, the President directed the Secretary of Agriculture, in consultation with the Department of Energy and the Environmental Protection Agency, to develop accounting rules and guidelines for crediting sequestration projects, taking into account emerging domestic and international approaches. Given the interactions between carbon sequestration and other greenhouse gas fluxes from land uses, USDA intends to develop accounting rules and guidelines for carbon and other greenhouse gas fluxes from land use practices (crops, animal agriculture, range and pasture, and forests).

On February 14, 2002, the President also directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency to proposed improvements to the current voluntary emission reduction registration program under section 1605(b) of the 1992 Energy Policy Act within 120 days. These improvements will enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches.

To achieve these objectives it will be necessary to supplement or supplant the

existing guidelines with new, more rigorous reporting requirements. On July 8, 2002, the Secretaries of Energy, Agriculture, and Commerce, and the Administrator of the Environmental Protection Agency wrote to be the President stating that the improvements to the existing Voluntary Greenhouse Gas Reporting Programs should:

1. Develop fair, objective, and practical methods for reporting baselines, reporting boundaries, calculating real results, and awarding transferable credits for actions that lead to real reductions.
2. Standardize widely accepted, transparent accounting methods.
3. Support independent verification of registry reports.
4. Encourage reporters to report greenhouse gas intensity (emissions per unit of output) as well as emissions or emissions reductions.
5. Encourage corporate or entity-wide reporting.
6. Provide credits for actions to remove carbon dioxide from the atmosphere as well as for actions to reduce emissions.
7. Develop a process for evaluating the extent to which past reductions may qualify for credit.
8. Assure the voluntary reporting program is an effective tool for reaching the 18 percent greenhouse gas intensity goal by 2012.
9. Factor in international strategies as well as State-level efforts.
10. Minimize transactions costs for reporters and administrative costs for the Government, where possible, without compromising the foregoing recommendations.

The meetings are intended to assist the Department in assessing the technical and methodological issues associated with developing new forest and agriculture accounting rules and guidelines. The meetings will provide an opportunity for open dialogue among farmers, forest land owners, farm groups and associations, businesses, industry associations, conservation organizations, environmental groups, institutions, individuals, and others affected interests. We intend to invite comments to ensure the full range of views and opinions are expressed. We also intend to provide an opportunity for those present to address the meeting. We also will accept and give full consideration to written views submitted including written responses to background materials prepared for the meetings. Written comments should be submitted to *ghgcomments@oce.usda.gov*.

Full agendas and various other materials will be made available prior to the workshop at: *http://www.usda.gov/agency/oce/gcpo/greenhousegasreporting.htm*.

Dated: November 15, 2002.

Keith Collins,

Chief Economist.

[FR Doc. 02–29881 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–38–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Horse Breeder Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency is seeking comments from all interested individuals and organizations on the extension of currently approved information collection that supports the Horse Breeder Loan program. This program is to provide loans to the horse breeders who have suffered economic losses resulting from Mare Reproductive Loss Syndrome (MLRS).

DATES: Comments must be received in writing on or before January 24, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Farm Service Agency, USDA, Attn: Cathy Quayle, Senior Loan Officer, Loan Making Division, Mail Stop 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522.

Comments also may be submitted via facsimile to (202) 720–6797 or by e-mail to: *cathy_quayle@wdc.usda.gov.*

The public may inspect comments received at 1280 Maryland Avenue, SW., Washington, DC 20024 in Suite 240 during normal business hours. Visitors are encouraged to call ahead to (202) 690–4018 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Cathy Qualye, Loan Making Division, (202) 690–4018 and *cathy_quayle@wdc.usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Horse Breeder Loan Program.

OMB Number: 0560–0221.

Expiration Date of Approval: December 31, 2002.

Type of Request: Extension with no revision.

Abstract: This information collection is necessary to support the FSA Horse Breeder Loan program, which is authorized under the Agriculture, Rural Development, Food and Drug Administration and Related Appropriation Act, 2002. The respondents are the horse breeders who suffered losses resulting from MLRS. Horse breeders must submit the forms and other information to FSA loan officials to verify the evidence of losses before making eligibility and financial determinations on their loan request. If the information is not collected from each horse breeder, FSA loan official will not able to make eligibility and feasibility decisions.

Estimate of Annual Burden: 1.572 hours per responses.

Estimated Annual Number of Respondents: 800.

Estimated Annual Number of Responses per Respondent: 2.50.

Estimated Total Annual Burden on Respondents: 1258 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Dated: November 13, 2002.

Teresa C. Lasseter,

Acting Administrator, Farm Service Agency.

[FR Doc. 02–29820 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Mineral County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) The Lolo National Forest's Mineral County Resource Advisory Committee will meet on December 12, 2002 and January 9, 2003 from 6 p.m. until 8 p.m. in Superior, Montana for their next two business meetings. The meetings are open to the public.

DATES: December 12, 2002 and January 9, 2003.

ADDRESSES: The meetings will be held at the Mineral County Courthouse, 300 River Street, Superior, MT 59872.

FOR FURTHER INFORMATION CONTACT: Robert Harper. Designated Federal Official (DFO), District Ranger, Superior District, Lolo National Forest at (406) 822–4233.

SUPPLEMENTARY INFORMATION: Agenda topics for the December 12 meeting include discussion and possible funding of projects as authorized under Title II of Pub. L. 106–393. Agenda topics for the January 9, 2003 meeting will be a continuation of project funding, and a representative from another western Montana Resource Advisory Committee to discuss their progress, projects and how they are organized . If the meeting location is changed, notice will be posted in local newspapers, including the Mineral Independent and the Missoulian.

Dated: November 18, 2002.

Deborah L.R. Austin,

Forest Supervisor, Lolo National Forest.

[FR Doc. 02–29835 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California, Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman Report, (5) Status of Project Proposals, (6) Update on Approved Projects, (7) Follow Up Presentation/Sunflower CRMP (8) General Discussion, (9) House Committee Report.

DATES: The meeting will be held on December 12, 2002, from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by December 10, 2002 will have the opportunity to address the committee at those sessions.

Dated: November 19, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–29839 Filed 11–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–850, A–583–826]

Collated Roofing Nails from the People's Republic of China and Taiwan: Final Results of Five Year Sunset Reviews and Revocation of Antidumping Duty Orders

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

ACTION: Notice of Final Results of Five Year Sunset Reviews and Revocation of Antidumping Duty Orders on Collated Roofing Nails from People's Republic of China and Taiwan.

SUMMARY: On October 1, 2002, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on collated roofing nails from the People's Republic of China (''PRC'') and Taiwan (67 FR 61577). The Department is revoking the antidumping duty orders on collated roofing nails from the PRC and Taiwan because no domestic party responded to the sunset review notice of initiation by the applicable deadline.

EFFECTIVE DATE: November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or James P. Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the ''Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations are to 19 CFR part 351(2002).

Background:

On November 19, 1997, the Department issued antidumping duty orders on collated roofing nails from the PRC (62 FR 61729) and Taiwan (62 FR 61730). Pursuant to section 751 (c) of the Act, on October 1, 2002, the Department initiated sunset reviews of these orders by publishing notice of the initiations in the **Federal Register** (67 FR 61577). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of the sunset reviews on these orders. However, no domestic interested party in the sunset reviews on these orders responded to the notice of initiation by the October 16, 2002 deadline (see section 19 CFR 351.218(d)(1)(i) of *Procedures for Conducting Five Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13520 (March 20, 1998)).

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party responds to the notice

of initiation, the Department will issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party in the sunset reviews of collated roofing nails from the PRC and Taiwan responded to the notice of initiation by the applicable deadline, we are revoking these antidumping duty orders.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(d)(2) of the Act, and 19 CFR 351.222(i)(2)(i), the Department will instruct the Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after November 19, 2002. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: November 19, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–29915 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570–881

Notice of Initiation of Antidumping Duty Investigation: Certain Malleable Iron Pipe Fittings From the People's Republic of China

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

EFFECTIVE DATE: November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Anya Naschak or Helen Kramer at (202) 482–6375 or (202) 482–0405, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigation

The Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR Part 351 (2002).

The Petition

On October 30, 2002, the Department received a petition filed in proper form by Anvil International, Inc., and Ward Manufacturing Inc. (collectively, the petitioners). The Department received information supplementing the petition on November 7, 2002, November 12, 2002, and November 15, 2002.

In accordance with section 732(b) of the Act, the petitioners allege that imports of malleable iron pipe fittings (malleable pipe fittings) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. *See* the Determination of Industry Support for the Petition section below.

Scope of Investigation

For purposes of this investigation, the products covered are shipments of certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Determination of Industry Support for the Petition

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The United States International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to their separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law. *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this petition, the petitioners do not offer a definition of domestic like product distinct from the scope of these investigations. Thus, based on our analysis of the information presented to the Department by the petitioners, and the information obtained and received independently by the Department, we have determined that there is a single domestic like product, which is defined in the Scope of Investigation section above, and have analyzed industry support in terms of this domestic like product.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act states that the administering authority shall determine that a petition has been filed by or on behalf of the industry if: (1) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like

product; and (2) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Information contained in the petition demonstrates that the domestic producers or workers who support the petition account for over 50 percent of total production of the domestic like product. *See* Petition for Imposition of Antidumping Duties: Malleable Iron Pipe Fittings from the People's Republic of China (Pipe Fittings Petition), dated October 30, 2002, at pages 2–3 and Exhibits 1 and 2. *See also* Amendment to the Petition dated November 15, 2002, at Exhibit 1. Therefore, the domestic producers or workers who support the petitions account for at least 25 percent of the total production of the domestic like product, as required by section 732(c)(4)(A)(i). *See* Import Administration AD Investigation Checklist, dated November 19, 2002 (Initiation Checklist) (public version on file in the Central Records Unit of the Department of Commerce, 1401 Constitution Ave., NW, Room B-099).

Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. *See* Initiation Checklist. Thus, the requirements of section 732(c)(4)(A)(ii) are met.

Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which the Department has based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. price and factors of production (FOP) are detailed in the Initiation Checklist.

The anticipated period of investigation (POI) for the PRC, a non-market economy (NME) country, is April 1, 2002, through September 30, 2002. Regarding an investigation involving a NME country, the Department presumes, based on the extent of central government control in a NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. *See, e.g., Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994). In the course of the investigation of malleable pipe fittings from the PRC, all parties will have the opportunity to provide relevant information related to the issue of the PRC's status and the granting of separate rates to individual exporters.

Export Price

The petitioners identified the following seven companies as producers and/or exporters of malleable pipe fittings from the PRC: Jinan Meide Casting Co., Ltd., National Steel Products Co., Ltd., Shandong Flying Casting & Forging Co., Ltd., Dalian Zhong Sheng Metal Products Co., Ltd., Hebei Great Wall Import & Export Corporation, Tianjin Foreign Trade Group, and Xiamen Jia Da Quan Valves & Fittings Co., Ltd. To calculate export price (EP), petitioners used publicly available price quotes for Chinese products from a U.S. distributer. From these price quotes, petitioners deducted a 10 percent rebate from the listed warehouse price, 5 percent of the net price for commission to the importer/wholesale distributor's sales representative, and 20 percent of the net price as the importer/distributor's mark-up to arrive at the importer price. Petitioners reasonably based these deductions on affidavits by a senior Anvil International official attesting that this price structure is representative of prices charged throughout the United States. *See* Initiation Checklist. We will further examine the nature of these deductions during the investigation.

Petitioners further deducted U.S. customs duty of 6.2 percent to arrive at a price net of customs duty. Petitioners calculated net U.S. price by deducting ocean freight and foreign inland freight from the price net of customs duty. *See* Exhibits 22 and 24 of the Petition. Petitioners estimated ocean freight by subtracting the average unit free alongside ship (FAS) value of subject imports from the average unit cost, insurance and freight (CIF) value using the Bureau of the Census IM145 import statistics. *See* Initiation Checklist.

Normal Value

The petitioners assert that the PRC is a NME country and that no determination to the contrary has yet been made by the Department. In all of its previous investigations, the Department has treated the PRC as a NME. *See, e.g., Notice of Final Determination Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China*, 66 FR 58115 (November 20, 2001), and *Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 29, 2002). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Because the PRC's status as a NME remains in effect, pursuant to section 771(18)(C)(i) of the Act, the petitioners determined the dumping margin using a FOP analysis.

For normal value (NV), the petitioners based the FOP, with the exception of labor, as defined by section 773(c)(3) of the Act, on the quantities of inputs of one U.S. malleable pipe fittings producer, Ward Manufacturing, Inc. The petitioners based the FOP for labor, as defined by section 773(c)(3) of the Act, on the quantities of inputs from the public ranged data of labor hours in the production of non-malleable pipe fittings,[1] reduced by 10 percent. The petitioners assert that information regarding the Chinese producers' consumption rates is not reasonably available, and have therefore assumed, for purposes of the petition, that producers in the PRC use the same inputs in the same quantities as the petitioners use. Based on the information provided by the petitioners, we believe that the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

Pursuant to section 773(c) of the Act, the petitioners assert that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) a market economy; (2) a significant producer of comparable merchandise; and (3) at a level of economic development comparable to the PRC in terms of per capita gross national income (GNI). The Department's regulations state that it will place primary emphasis on per capita GNI in determining whether a given market economy is at a level of economic development comparable to the NME country (*see* 19 CFR 351.408(b)). In recent antidumping cases involving the PRC, the Department identified a group of countries at a level of economic development comparable to the PRC based primarily on per capita GNI. This

[1] Submitted as a Section D Questionnaire Response by Jinan Meide Casting Company in the investigation of Non-Malleable Cast Iron Pipe Fittings from China, A-570-875 (June 17, 2002)

group includes India, Indonesia, Sri Lanka, the Philippines, and Pakistan. With the exception of India, none of these countries is a significant producer of malleable pipe fittings. The petitioners assert that India is the most appropriate surrogate. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Act, petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. Materials were valued based on Indian import values, as published by *Monthly Statistics of the Foreign Trade of India (Indian Import Statistics*). Petitioners applied an inflation adjustment factor using the Indian Wholesale Price Index for September 2002. Petitioners divided the index for the period available by the index derived from the period in which the input price was located, and multiplied the input price by the resulting ratio. Petitioners calculated the surrogate value of steel scrap using the mill heavy average prices reported by the Indian newspaper, *The Economic Times*, which yields more contemporaneous publicly available prices. *See* Initiation Checklist.

Labor was valued using the Department's regression-based wage rate for the PRC, in accordance with 19 CFR 351.408(c)(3). *See* Initiation Checklist.

Electricity was valued using Indian electricity prices for industrial consumers taken from the second quarter 2002 issue of *Energy Prices and Taxes* published by the OECD's International Energy Agency. The electricity prices for industry for India are reported in U.S. dollars and for the year of 2000. In order to arrive at September 2002 prices, petitioners multiplied the computed amount by a U.S. inflation factor because it was denominated in U.S. dollars. *See* Initiation Checklist.

Petitioners derived the surrogate value for natural gas from a price in India found in the 1999 financial report of EOG Resources Inc., expressed in U.S. dollars per MCF. To inflate the price to September 2002 levels, petitioners multiplied the amount by a U.S. inflation factor because it was denominated in U.S. dollars. *See* Initiation Checklist.

For overhead, selling, depreciation, and general and administrative (SG&A) expenses, petitioners calculated the financial ratios based on the Indian financial data used in the Preliminary Determination of Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China. *See* Memo to Holly A. Kuga dated September 19, 2002. Based on the information provided by the petitioners, we believe that the surrogate values represent information reasonably available to the petitioners and are acceptable for purposes of initiating this investigation. *See* Initiation Checklist.

Based upon the comparison of EP to NV, the estimated dumping margins are between 34.69 and 148.08 percent. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we will re-examine the information and may revise the margin calculation, if appropriate.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of malleable pipe fittings from the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise sold at less than NV. The volume of imports from the PRC, using the latest available data, exceeded the statutory threshold of seven percent for a negligibility exclusion. *See* section 771(24)(A)(ii) of the Act. The petitioners contend that the industry's injured condition is evidenced in the declining trends in profitability, shipments, production, capacity utilization, employment, decreased U.S. market share, and increasing Chinese imports. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, domestic consumption, and domestic production information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist.

Initiation of the Antidumping Investigation

Based on our examination of the petition on malleable pipe fittings, and the petitioners' response to our supplemental questionnaires clarifying the petition, and additional independent data, we find that the petition meets the requirements of section 732 of the Act. *See* Initiation Checklist. Therefore, we are initiating the antidumping duty investigation to determine whether imports of malleable pipe fittings from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine, no later than December 16, 2002 whether there is a reasonable indication that imports of malleable pipe fittings from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 19, 2002.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–29914 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration, North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: On November 19, 2002, the binational panel issued its decision in the review of the final scope ruling made by the International Trade Administration, respecting Circular Welded Non-Alloy Steel Pipe from Mexico, NAFTA Secretariat File Number USA–MEX–98–1904–05. The

majority remanded the determination to the investigating authority with the following instructions: (1) Re-evaluate whether the Order applies to Galvak's mechanical tubing, giving appropriate weight to the fact that the language of the order on its face excludes all mechanical tubing, (2) if necessary, explain adequately why the line pipe determination's conclusion that the exclusionary clause is based on industry classification and not actual end use should not be employed in the instant scope determination, and (3) take such other action as may be appropriate, not inconsistent with this decision. The panel required DOC to provide the determination on remand within 60 calendar days (January 6, 2003). Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a request for panel review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these rules.

Panel Decision: The panel remanded the final scope determination of the International Trade Administration respecting Circular Welded Non-Alloy Steel Pipe from Mexico with instructions as listed above. The determination on remand is due on January 20, 2003.

Dated: November 19, 2002.

Caratina L. Alston,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 02–29811 Filed 11–25–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111402B]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fisheries; Notice that Vendor Will Provide Year 2003 Cage Tags

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

ACTION: Notice of vendor to provide fishing year 2003 cage tags.

SUMMARY: NMFS informs surf clam and ocean quahog allocation owners that they are required to purchase their year 2003 cage tags from a vendor. The intent of this notice is to comply with regulations for the surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

ADDRESSES: Written inquiries may be sent to Douglas W. Christel at: National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–3799.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Management Specialist, (978) 281–9141; fax 978–281–9135; e-mail *Douglas.Christel@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surf clam and ocean quahog fisheries regulations at 50 CFR 648.75(b) authorize the Regional Administrator, Northeast Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan, shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, KY, is the authorized vendor of cage tags required for the fishing year 2003 Federal surf clam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to allocation owners in these fisheries within the next several weeks.

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

Dated: November 20, 2002.

Richard W. Surdi,

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

[FR Doc. 02–29896 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 020821203–2203–01]

Call for Proposals for Research in Satellite Data Assimilation for Numerical and Climate Prediction Models—Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA), National Environmental Satellite, Data, and Information Service (NESDIS).

ACTION: Notice.

SUMMARY: The National Environmental Satellite, Data, and Information Service (NESDIS) publishes this notice to amend a notice entitled Call for Proposals for Research in Satellite Data Assimilation for Numerical and Climate Prediction Models.

ADDRESSES: All submissions should be directed to: NOAA/NASA Joint Center for Satellite Data Assimilation, Attn: Kathy LeFevre, 5200 Auth Road, Room 701, Camp Springs, MD 20746–4304.

FOR FURTHER INFORMATION CONTACT: Kathy LeFevre, (301) 763–8127, *Kathy.LeFevre@noaa.gov.*

SUPPLEMENTARY INFORMATION: The National Environmental Satellite, Data, and Information Service (NESDIS) published a notice of availability of financial assistance in the **Federal Register** of September 20, 2002, (67 FR 59264, entitled ''Call for Proposals for Research in Satellite Data Assimilation for Numerical and Climate Prediction Models.'') The following pages of the **Federal Register** notice of September 20, 2002 are amended as follows:

On Page 59265: First column, under the heading **DATES,** sixth line, ''November 15, 2002'' should read ''December 9, 2002. If you have already submitted an application we are accepting revisions.''

First column, under the sub-heading Funding Availability, the second sentence should read: ''Individual annual awards in the form of grants and cooperative agreements are expected to range from $50,000 to $150,000, although greater amounts may be awarded.''

Second column, under the sub-heading Eligibility, the first sentence

should read: ''Eligible applicants are institutions of higher education, other non profits, commercial organizations, state, local and Indian tribal governments and Federal agencies (NOAA and non-NOAA).''

On pages 59266 and 59267: Under the sub-heading, Program Description, Project Priorities Areas of Investigation, the paragraphs entitled ''Atmospheric Soundings'' and ''Clouds and Precipitation'' should read as follows:

Atmospheric Soundings

1. Improvements and/or enhancement to radiative transfer models for advanced sounding instruments, incorporating cloud and aerosol effects, with the aim of working toward (a) assimilation of cloudy data, (b) aerosol correction of retrieved quantities, and (c) improved surface emissivity for use of data over land and ice (see Radiative Transfer Models, above).

3. Observation System Simulation Experiments (OSSEs) for high-resolution infrared sounders (*e.g.*, AIRSA, CrIS, IASI) aimed at examining the trade-off between the size of the instrument field of view and the noise characteristics.''

Clouds and Precipitation

Second paragraph should read: ''The incorporation of cloud and precipitation data will require development of many components of the data assimilation system. These developments may include not only appropriate forward models, errors statistics, bias correction and quality control, but also development of appropriate moist balances, new techniques for handling non-linearities in the balance equations or forward models, and modification of the model's parameterizations to increase compatibility with the observations and to eliminate inappropriate discontinuities.''

On Page 59267: Column one, paragraph entitled ''Oceans'', the following sentence is deleted: ''Successful proposals will require close coordination with NOAA/NCEP and/or NASA/NSIPP.''

On Page 59267: Under the sub-heading Application Procedures, the following sentence is added:

''The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.''

The following sentences are removed: ''The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 (66 FR 49917; DOCID:fr01oc01–39) are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. *See* Building and Construction Trades *Department* v. *Allbaugh,* 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.''

On page 59268: Under the sub-heading Selection Criteria (With Weights), criteria numbers one and three should read as follows:

''1. Importance and relevance of research to the assimilation of satellite data in NWP models (25 points). Will the proposed work advance the science of assimilating satellite data in NWP models? Will the proposed project make a significant contribution to the high priority research and technical areas listed above?''

''3. Applicability and Effectiveness (25 points). Does the proposed work have the potential to significantly advance the use of satellite observations in numerical weather and short-term climate prediction models? Does the proposed work have the potential for long-term (lasting) value and widespread applicability? Does the proposed work include an effective mechanism by which the project's progress can be evaluated?''

Dated: November 18, 2002.

Mary M. Glackin,

Deputy Assistant Administrator for Satellite and Information Services.

[FR Doc. 02–29838 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110802A]

Endangered Species; File No. 1405

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Elizabeth Wenner, South Carolina Department of Natural Resources, Charleston, SC 29422–2559, has applied in due form for a permit to take loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before December 26, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to capture up to 45 loggerhead, 10 Kemp's ridley, 5 green, 5 leatherback, and 5 hawksbill sea turtles annually during shallow water trawl surveys intended to provide fishery-independent data on seasonal abundance and biomass of all species that are accessible by high rise trawls. The turtles would be measured, flipper and PIT tagged, and released near the site of capture, unless it is determined they are in need of veterinary assistance to survive. Sea turtles held for veterinary care would be transferred to an appropriate treatment facility. The applicant also requests authorization for a combined total of three incidental mortalities of loggerhead and Kemp's ridley sea turtles and a single incidental mortality for each of the other three species. The applicant proposes to conduct these captures along the South Atlantic Bight from Cape Hatteras, NC to Cape Canaveral, FL. The permit is requested for a period of 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to

prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: November 18, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–29890 Filed 11–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Office of Admissions, Headquarters United States Air Force Academy, Department of the Air Force, Department of Defense.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary of Defense announced the proposed reinstatement of a public collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical unity; (b) the accuracy of the agency's estimate of the burden of 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments by January 24, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Office of Admissions, 2304 Cadet Drive, Suite 236, USAF Academy, CO 80840. Point of contact is Ms. Shawn Hordemann, 719–333–3226.

FOR FURTHER INFORMATION CONTACT: To request additional information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address.

Title, Associated Form, and OMB Number: United States Air Force Academy Writing Sample, United States Air Force Academy Form O–878, OMB Number 0701–0147.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 4100.

Number of Respondents: 4100.

Responses per Respondent: 1.

Average Burden for Respondent: 60 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–29836 Filed 11–22–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice and Request for Review/ Comment of Changes to ICD–GPS–200C

AGENCY: Department of the Air Force, DoD.

SUMMARY: This notice informs the public that the Global Positioning System (GPS) Joint Program Office (JPO) proposes to revise ICD–GPS–200, Navstar GPS Space Segmen/Navigation User Interfaces, to include the description of the proposed L2C signal, to be transmitted at the L2 frequency (1227.6 MHz). These proposed changes are described in a Proposed Interface Revision Notice (PIRN): PIRN–200C–007 revision B. This revision B is an update from the last proposed revision A of the PIRN. The PIRN can be reviewed at the following web site: *http://gps.losangeles.af.mil.* Select ''Configuration Management'' and then ''Public Data for Review.'' Hyperlinks are provided to ''PIRN–200C–007B (PDF)'' and to review instructions. Reviewers should save the PIRN to a local memory location prior to opening and performing the review.

ADDRESSES: Submit comments to SMC/CZERC, 2420 Vela Way, Suite 1467, El Segundo, CA 90245–4659. A comment matrix is provided for your convenience at the web site and is the preferred method of comment submittal. Comments may be submitted to the following Internet address: *smc.czerc@losangeles.af.mil.* Comments may also be sent by fax to 1–310–363–6387.

DATES: The suspense date for comment submittal is December 9, 2002.

FOR FURTHER INFORMATION CONTACT: CZERC at 1–310–363–6329, GPSs JPO System Engineering Division, or write to the address above.

SUPPLEMENTARY INFORMATION: The civilian and military communities use the Global Positioning System which employs a constellation of 24 satellites to provide continuously transmitted signals to enable appropriately configured GPS user equipment to produce accurate position, navigation, and time information.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–29834 Filed 11–22–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in

accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

(a) The members of the Performance Review Board for the U.S. Army Research Laboratory are:

1. Dr. N. Radhakrishnan, Director, Computational and Information Sciences Directorate, U.S. Army Research Laboratory.

2. Ms. Barbara Leiby, Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Materiel Command.

3. Dr. Thomas H. Killion, Director, Personnel Technologies Directorate, Office of the Deputy Chief of Staff, G–1, Headquarters Department of the Army.

(b) Alternate members for the U.S. Army Research Laboratory are:

1. Ms. Kathy A. Kurke, Chief Counsel, NASA-Langley Research Center.

2. Mr. Richard E. McClelland, Director, Tank-Automotive Research, Development and Engineering Center.

3. Dr. C.I. Change, Director, Army Research Office and Deputy Director for Basic Science, U.S. Army Research Laboratory.

(c) The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. Major General Hans Van Winkle, Deputy Chief of Engineers/Deputy Commanding General.

2. Major General Robert Griffin, Director of Civil Works.

3. Brigadier General Steven Hawkins, Commanding General, U.S. Army Engineer Division, Great Lakes and Ohio River.

4. Brigadier General David Fastabend, Commanding General U.S. Army Engineer Division, Northwestern.

5. Dr. Michael O'Connor, Director of Research and Development, Headquarters.

6. Mr. William Brown, Principal Assistance for Military Program, Headquarters.

7. Ms. Linda Garvin, Director of Real Estate, Headquarters.

8. Mr. Steve Browning, Military and Technical Director, South Pacific Division.

9. Mr. Donald Basham, Civil Works and Management Director, Mississippi Valley Division.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–29882 Filed 11–22–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Indian River Lagoon-North Feasibility Study Located in Portions of Volusia, Brevard, Indian River, St. Lucie, and Okeechobee Counties, FL

AGENCY: Department of the Army, Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, intends to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for the Indian River Lagoon-North Feasibility Study. Encompassing the lagoon's northern watershed, the study area begins in Volusia County near the Ponce de Leon Inlet, extends southward through Brevard and Indian River counties, and ends near the Fort Pierce Inlet in St. Lucie County and northeast Okeechobee County, Florida. The objective of this study is to perform a comprehensive review of restoration alternatives for the lagoon.

FOR FURTHER INFORMATION CONTACT: Mr. Paul E. Stodola, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232–0019, by email *Paul.E.Stodola@saj02.usace.army.mil* or by telephone at 904–232–3271.

SUPPLEMENTARY INFORMATION:

a. Proposed Action. The proposed Draft Supplemental Environmental Impact Statement (DSEIS) for the Indian River Lagoon-North Feasibility Study would supplement the Central and South Florida Programmatic Environmental Impact Statement completed in July 1999. A DSEIS for the Indian River Lagoon-South Feasibility Study, completed in October 2001, identified and assessed restoration alternatives for the lagoon's southern watershed. Authority and funds for the proposed action are provided by Section 528 of the Water Resources and Development Act of 1996 (Pub. L. 104–303). A reconnaissance report has been completed and resulted in a recommendation to continue the study into the feasibility phase.

The Indian River Lagoon-North estuarine ecosystem consists of three major water bodies: The Indian River, the Banana River, and the Mosquito Lagoon. This estuary is comprised of shallow interconnected linear lagoons interspersed with various types of habitats including seagrass, mangroves, and salt marsh. Tropical climatic influences converging with these habitat types have resulted in a unique and diverse assemblage of fauna and flora that occur nowhere else. Development and pollution have significantly degraded the water quality and reduced the biological productivity of the lagoon. The objective of this study is to identify and assess alternatives that would restore the lagoon's water quality and ecological conditions.

b. Alternatives. Specific proposed restoration alternatives include the following:

1. Goal I: Improve Ecological Values; Reduce excessive freshwater inflows and pollutant loadings to the Indian River Lagoon; Improve water quality in the Lagoon; Improve habitat for Lagoon biota, with emphasis on seagrass; Increase spatial extent and functional quality of submerged aquatic vegetation and watershed wetlands; Increase functional quality of native upland habitat; Maintain or improve diversity and abundance of native plant and animal species, including Federal, state, and local listed species.

2. Goal II: Improve Economic Values and Social Well Being; Maintain or improve water supply; Maintain or improve flood protection; Improve opportunities for tourism, recreation, and environmental education; Improve commercial and recreational fisheries and associated industries.

3. A No-Action Alternative is also being considered.

c. Scoping Process. The scoping process as outlined by the Council on Environmental Quality would be utilized to involve Federal, State, and local agencies, affected Indian tribes, and other interested persons and organizations. A scoping letter would be sent to the appropriate parties requesting comments and concerns regarding issues to consider during the study.

Significant issues to be analyzed in the DSEIS would include effects on Federally listed threatened and endangered species, Essential Fish Habitat, health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, socioeconomic resources, and other issues identified through scoping and public involvement.

The proposed action would be coordinated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act, with the NMFS concerning Essential Fish Habitat, and with the State Historic Preservation Officer.

The proposed action would also involve evaluation for compliance with

guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency.

The Corps and the non-Federal sponsor, St. Johns River Water Management District, would provide extensive information and assistance on the resources to be impacted and alternatives.

d. Scoping Meetings. Public scoping meetings would be held. Exact dates, times, and locations would be published in local papers.

e. DSEIS Availability. The DSEIS would be available on or about May 2006.

Dated: November 12, 2002.

James C. Duck,

Chief, Planning Division.

[FR Doc. 02–29883 Filed 11–22–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF ENERGY

[DE–PS03–03SF22698]

Solicitation for Proposals: Nuclear Explosion Monitoring Research and Engineering

AGENCY: National Nuclear Security Administration (NNSA), Department of Energy (DOE) and Air Force Research Laboratory (AFRL).

ACTION: Notice of intent to release solicitation for financial assistance and acquisition proposals.

SUMMARY: The DOE/NNSA and AFRL, through the NNSA Oakland Operations Office, intends to seek proposals to advance the state-of-the-art in nuclear explosion monitoring in the field of seismic methods. This will be achieved through basic and applied research that enhances understanding of the underlying phenomena, proposes new methods of tackling monitoring problems, or develops new data for use in nuclear explosion monitoring. It is anticipated this solicitation will be released on or about November 30, 2002.

ADDRESSES: The formal solicitation document, Joint Solicitation for Proposals: Nuclear Explosion Monitoring Research and Engineering (DE-PS03–03SF22698), will be available through the Industry Interactive Procurement System (IIPS) located at the following URL: *http://e-center.doe.gov*, (reference Notice of Intent for Nuclear Explosion Monitoring, published November 5, 2002). IIPS provides the medium for disseminating solicitations, receiving proposals and evaluating proposals in a paperless environment. Proposals are required to be submitted via IIPS. Individuals who have the authority to enter into a financial assistance agreement or contract on behalf of their institution and intend to submit a proposal via the IIPS system must register with IIPS and receive confirmation that they are registered prior to being able to submit a proposal. An IIPS ''User Guide for Contractor'' can be obtained by going to the IIPS Homepage at the following URL: *http://e-center.doe.gov* and then clicking on the ''Help'' button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPSHelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Gloria Abdullah-Lewis, Contract Specialist, U.S. Department of Energy, National Nuclear Security Administration, 1301 Clay Street (Room 700N), Oakland, CA 94612–5208; email *gloria.abdullah-lewis@oak.doe.gov*.

SUPPLEMENTARY INFORMATION: Research products under this solicitation shall support Air Force requirements in improving the nation's capabilities to monitor nuclear explosion monitoring. Information about the NNSA Nuclear Explosion Monitoring Research & Engineering Program integration of research products into operational form for the Air Force can be found online at *http://www.nemre.nn.doe.gov* under Knowledge Base. The solicitation document will contain all the information related to this action for prospective proposers. The North American Industry Classification System (NAICS) number for this program is 541710.

Issued in Oakland, CA on November 18, 2002.

Ernest Rios,

Division Director, Financial Assistance Center, Oakland Operations Office.

[FR Doc. 02–29864 Filed 11–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation; Notice of Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, December 11, 2002 6 p.m.–9:30 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board*: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- The meeting presentation will focus on the DOE Comprehensive Waste Disposition Plan, which provides the scope, waste generation forecast, plans for disposal, and issues associated with disposition of Environmental Management Program wastes.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on November 19, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–29863 Filed 11–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–60–001]

CenterPoint Energy Gas Transmission Company; Notice of Changes to Tariff Filing

November 19, 2002.

Take notice that on November 15, 2002, CenterPoint Energy Gas Transmission Company (CEGT) filed to cancel a tariff sheet, Original Sheet No. 132A, that had been erroneously included in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *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. 02–29859 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–113–000]

El Paso Electric Company, Enron Power Marketing, Inc., Enron Capital and Trade Resources Corporation; Notice Establishing Comment Date

November 18, 2002.

On August 13, 2002, the Commission issued an order initiating investigation, and establishing hearing procedures and refund effective date (Order) in the above-docketed proceeding. By this notice, the date for the filing of motions to intervene, comments, and protests is November 29, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29830 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–75–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 19, 2002.

Take notice that on November 14, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective as indicated below:

2nd Revised Ninth Revised Sheet No. 5 (Effective 1–1–03)
1st Rev Tenth Revised Sheet No. 5 (Effective 5–1–03)
Fifth Revised Sheet No. 5–A (Effective 1–1–03)
1st Revised Seventh Revised Sheet No. 6 (Effective 1–1–03)
1st Rev Eighth Revised Sheet No. 6 (Effective 5–1–03)

Kern River states that the purpose of this filing is to revise its tariff to incorporate the Gas Research Institute (GRI) surcharges approved by the Commission for 2003.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–29861 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–547–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

November 19, 2002.

Take notice that on November 15, 2002 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in its filing.

National Fuel states that this filing is being made in compliance with the Commission's Order issued on October 16, 2002, in the above-referenced docket. The October 16 Order directed National Fuel to file revised tariff sheets to clarify certain provisions found in Section 10.8 of its General Terms and Conditions which provides National Fuel with the authority to terminate capacity release awards upon termination of the releasing shipper's contract or award and defines

replacement shippers' rights in this situation.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *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. 02–29858 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–331–002]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

November 19, 2002.

Take notice that on November 15, 2002, PG&E Gas Transmission, Northwest Corporation (GTN), tendered for filing proposed and alternate tariff sheets to comply with the Commission's October 31, 2002 Order On Compliance Filing in Docket Nos. RP02–331–000 and RP02–331–001. This proceeding primarily addresses issues related to the design of incremental fuel rates associated with GTN's 2002 Pipeline Expansion Project. GTN requests that the proposed tariff sheets be made effective November 1, 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *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. 02–29857 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–397–006]

Questar Pipeline Company; Notice of Compliance Filing

November 19, 2002.

Take notice that on November 15, 2002, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective as indicated on each tariff sheet:

Substitute Eighth Revised Sheet No. 1, Effective October 1, 2002
Substitute Twenty-Fifth Revised Sheet No. 5, Effective October 1, 2002
Substitute Seventh Revised Sheet No. 56, Effective December 1, 2002

Questar states that tariff language that was approved in the referenced four separate proceedings is consolidated into the above tariff sheets.

Questar further states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *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. 02–29856 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–73–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

November 19, 2002.

Take notice that on November 13, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing revised tariff sheets as part of its FERC Gas Tariff, Fifth Revised Volume No. 1: Twenty-Second Revised Sheet No. 26A; Seventh Revised Sheet No. 180; and Fourth Revised Sheet No. 220A, with an effective date of December 13, 2002.

Tennessee states that this filing is to update Rate Schedule NET and Rate Schedule NET–284 to reflect the conversion of five shippers to service under Rate Schedule FT–A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *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. 02–29860 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–17–000, QF87–365–005; QF90–43–004 and QF91–59–005]

Investigation of Certain Enron-Affiliated QFs, Zond Windsystems Holding Company, Victory Garden Phase IV Partnership, Sky River Partnership; Notice Establishing Comment Date

November 14, 2002.

On October 24, 2002, the Commission issued an order initiating investigation and hearing (Order) in the above-docketed proceedings. By this notice, the date for the filing of motions to intervene, comments, and protests is December 5, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29829 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–90–001]

AES Ocean Express, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Ocean Express Pipeline Project, Request for Comments on Environmental Issues, and Notice of a Public Scoping Meeting and Site Visit

November 19, 2002.

On February 21, 2002, AES Ocean Express, L.L.C. (Ocean Express) filed its Application for Certificates of Public Convenience and Necessity for authorization to own, construct, operate and maintain a new 24-inch diameter, approximately 54.3-mile interstate natural gas pipeline extending from a receipt point on the Exclusive Economic Zone (''EEZ'') boundary between the United States and the Bahamas to delivery points in Broward County, Florida, together with certain ancillary facilities. Shortly after Ocean Express filed that application, on March 26, 2002, the Naval Surface Warfare Center, Carderock Division (''NSWCCD'') filed a motion to intervene in which it expressed concerns regarding the routing of the project and its potential impacts on NSWCCD operations. Since that time, Ocean Express and NSWCCD have met and reached an agreement in principle on measures to resolve NSWCCD's technical and operational concerns regarding construction, operation, and maintenance of the proposed Ocean Express Pipeline. On October 18, 2002, Ocean Express filed an Amendment to the Application proposing a new route variation and design changes for the nearshore portion of Ocean Express' offshore pipeline in the vicinity of the Navy Restricted Area.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) and the Minerals Management Service (MMS) will prepare an Environmental Impact Statement (EIS) that will analyze the environmental impacts of the proposed Ocean Express Pipeline Project.[1] The proposed pipeline originates in the Bahamas and would come ashore east of Dania, Florida. These facilities would consist of about 54.3 miles of 24-inch diameter pipeline (about 48.0 miles offshore and 6.3 miles onshore), two aboveground metering facilities, a pig launching/receiving station, one aboveground shutoff valve, and one belowground valve. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The MMS will have primary responsibility for offshore analysis in U.S. waters and will coordinate with the U.S. Army Corps of Engineers regarding Florida state waters review.

The application, amended application, and other supplemental filings in this docket are available for viewing on the FERC Internet website (*http://www.ferc.gov*). Click on the ''FERRIS'' link, select ''General Search'' from the FERRIS Menu, and follow the instructions, being sure to input the correct docket number (CP02–90). General information about the MMS and detailed information regarding Florida state and Federal waters can be accessed at the MMS Internet website (*http://www.mms.gov*).

The FERC is the lead agency and the MMS is a Federal cooperating agency for this project because the MMS has jurisdiction by law as well as special expertise regarding the potential environmental impacts associated with that portion of the proposed pipeline that would be installed on the Outer Continental Shelf.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice that Ocean Express provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain

[1] Ocean Express' application was filed with the Commission on February 21, 2002, under Section 7) of the Natural Gas Act as amended, and Parts 157 and 284 of the Commission's regulations.

and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*http://www.ferc.gov*).

Summary of the Proposed Project

Florida is experiencing a substantial increase in demand for electric power as a result of population growth in the state. The Ocean Express project would transport into Florida up to 842 million standard cubic feet of natural gas per day. The project would deliver the gas to an interconnect with the Florida Gas Transmission Company (FGT) system and an interconnect with the Florida Power & Light Company (FPL) gas line that services the FPL Fort Lauderdale Power Plant.

The Ocean Express Pipeline Project would be located onshore in Broward County, Florida and offshore in the Atlantic Ocean. The project would receive gas at the U.S./Bahamian EEZ at a subsea connection to a 24-inch pipeline, referred to as the Bahamian Pipeline. The Bahamian Pipeline would transport natural gas from a proposed liquefied natural gas (LNG) receiving, storage, and regasification facility on Ocean Cay, a manmade industrial island in Bimini, Commonwealth of the Bahamas.

The LNG facility and the Bahamian Pipeline are non-jurisdictional facilities and would be constructed and operated by AES Ocean LNG, Ltd., a Bahamian affiliate. The LNG facility would receive LNG tankers arriving from international LNG supply locations. The LNG would be offloaded from the tankers and stored in specially designed storage tanks. From there, the LNG would be revaporized in heat exchangers on the terminal site and the resulting natural gas would be fed into the 24-inch-diameter offshore pipeline.

The FERC and MMS authorizations for this project would not extend eastward of the EEZ. The Government of the Bahamas regulates matters pertaining to the environment and safety and traditionally requires an environmental impact assessment as a condition to approving a project such as the LNG terminal and Bahamian Pipeline. The Government of the Bahamas is in the process of reviewing the environmental impact assessment for these facilities.

The LNG facility and the Bahamian Pipeline are not part of the facilities proposed in the Ocean Express application to the FERC. In its application, Ocean Express seeks authority to construct and operate the following:

—Offshore Pipeline Segment

The proposed offshore pipeline segment would be located in the Atlantic Ocean, off the southeast Florida coastline, and would consist of approximately 48 miles of 24-inch-diameter pipeline (Offshore Pipeline). The Offshore Pipeline would traverse the Atlantic Ocean, starting at the U.S./Bahamian EEZ, passing through Federal and state waters, and end at a shoreline entry east of Dania, Florida to connect with the proposed onshore pipeline segment.

—Nearshore Pipeline Segment

The Florida shore approach would be installed utilizing horizontal directional drilling (HDD) techniques to minimize impacts to three near-shore reef trends. The pipeline would be directionally drilled out from the Dania Beach Boulevard (Route A1A) traffic circle to a point 6,170 feet from shore to a previously disturbed, former sand borrow pit located in a gap between two reef systems. A second 2,372-foot-long HDD segment (offshore HDD) would extend from the former sand borrow pit to a point east of the outermost reef system.

The remaining sections of the offshore segment would be installed by direct pipe lay on the sea floor using a laybarge. AES is evaluating the feasibility of using various methods to either bury the pipeline or cover it with protective concrete mats along the segment between the two HDD segments and from the second HDD to water depths of approximately 200 feet. Where water depths exceed 200 feet, the offshore pipeline would also be laid directly on the sea floor, with no covering proposed.

—Onshore Pipeline Segment

The proposed onshore pipeline would consist of approximately 6.3 miles of 24-inch-diameter pipeline (Onshore Pipeline). The Onshore Pipeline would start at the terminus of the proposed Offshore Pipeline (the shoreline entry) and end at the proposed interconnections with the FGT and FPL systems.

The proposed facilities are summarized in tables 1 and 2 below. The general locations of the project facilities are shown in Appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in Appendix 3.

TABLE 1.—PROPOSED PIPELINE FACILITIES FOR THE OCEAN EXPRESS PIPELINE PROJECT

Location	Length (miles)
U.S. Federal Waters	43.0
Florida State Waters	5.0
Broward County (Onshore)	6.3
Total New Pipeline Length	[1] 54.3

[1] Does not include 40.4 miles of non-jurisdictional waters between the Bahamas and the EEZ.

TABLE 2.—SUMMARY OF ANCILLARY FACILITIES FOR THE OCEAN EXPRESS PIPELINE PROJECT

Facility	Approximate milepost	Description
Shutoff Valve belowground).	46.1	Dania Beach Boulevard Circle.
Shutoff Valve and Pig Launching/Receiving Station (aboveground).	52.4	Located prior to Interconnections with FGT and FPL.
2 Meter Stations and Pressure Regulation Stations.	52.4	Meter Station connections to FGT and FPL located on a 0.25-acre site.

Land Requirements for Construction

Construction of the onshore portion of the Ocean Express Pipeline Project would affect a total of about 34 acres of land including: 19 acres for pipeline construction; 9.4 acres for extra workspace; 6.2 acres for a contractor yard; and 0.25 acre for aboveground facilities. Total land requirements for the permanent right-of-way would be about 11.3 acres. The remaining 23 acres of land affected by construction would be restored and allowed to revert to its former use.

Approximately 1.6 miles (25 percent) of the Onshore Pipeline would be directionally drilled or bored underground. Of the remaining 4.7 miles of the route, approximately 3.8 miles (60 percent) would be installed parallel to existing roadway, pipeline, and utility rights-of-way which are within commercial/industrial areas and 0.9 mile (15 percent) would cross open land. Ocean Express would typically use a 45-foot-wide construction right-of-way. Additional extra temporary work areas may be necessary for waterbody,

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''FERRIS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

highway, and railroad crossings; additional topsoil storage; and pipe storage and equipment yards.

Following construction and restoration of the right-of-way and temporary extra work spaces, Ocean Express would typically retain a new 20-foot-wide permanent easement for the 24-inch-diameter pipeline. The remaining portion of the construction right-of-way would be returned to landowners for their use without restrictions after appropriate reclamation efforts are successful.

Constructing the offshore portion of the Ocean Express Pipeline Project would affect about 1,840 acres. Installation of the project in State of Florida waters includes two HDD segments totaling 1.62 miles and direct lay on the sea floor for 3.38 miles in depths of less than 200 feet.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This is called ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

—Geology
—Water resources
—Vegetation
—Cultural resources
—Socioeconomics
—Reliability and safety
—Air quality and noise
—Soils and sedmients
—Wetlands, barrier beaches, and submerged aquatic vegetation
—Fish and wildlife
—Endangered and threatened species
—Land use, recreation, and visual resources
—Alternatives

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the . The will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the. We will consider all comments on the and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our responses to comments received and will be used by the Commission in its decision-making process to determine whether to approve the project. To ensure your comments are considered, please carefully follow the instructions in the Public Participation and Scoping Meeting section.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by Ocean Express, and early input from intervenors. Some of these issues are listed below. This list is preliminary and may be changed based on your comments and our analysis. Currently identified environmental issues for the Ocean Express Pipeline Project include:

—Construction and operational effects on seagrasses, coral reefs, hard and soft bottom communities, mangroves, and aquatic organisms;
—Extent and effects of turbidity and sedimentation that may result from pipeline trenching and directional drilling in shallow waters;
—Potential failure of the two HDD procedures;
—Effects on wildlife and fisheries including essential fish habitat and fisheries of special concern, other commercial and recreational fisheries, or other species listed at the Federal, state, or local level;
—Potential fuel spills from the pipelay barges and associated vessel traffic;
—Potential effects on West Lake Park and the Airport Buffer Strip Park;
—Potential effect on future land use;
—Potential effect on Broward County tree resources and on rare plants;
—Effect of construction on groundwater and surface water supplies;
—Potential introduction and control of non-native plant species;
—Effects on federally endangered and threatened species including the wood stork, Johnson's seagrass, Garber's spurge, West Indian manatee, loggerhead sea turtle, green sea turtle, hawksbill sea turtle, Kemp's ridley sea turtle, and leatherback sea turtle;
—Potential effects on offshore submerged cultural resources;
—Noise generated as a result of pipeline construction;
—Temporary disruption of local roadways, bikeways, and fitness trails during construction;
—Offshore crossings of the U.S. Naval Surface Warfare training facilities and existing utility cables;
—Potential impacts on 0.7 acre of forested wetlands;
—Potential effect of the project on designated airport runway clearance zones;
—Cumulative effects of the proposed project with other projects, including other natural gas pipelines, which have been or may be proposed in the same region and similar time frames; and
—Safety of the proposed pipeline.

Public Participation and Scoping Meeting

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

—Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
—Label one copy of the comments for the attention of Branch.
—Reference Docket No.
—Mail your comments so that they will be received in Washington, DC on or before December 20, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result,

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request . If you do not return the Information Request, you will be taken off the mailing list.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting the FERC will conduct in the project area. The location and time for this meeting is listed below.

SCHEDULE FOR THE OCEAN EXPRESS PIPELINE PROJECT ENVIRONMENTAL IMPACT STATEMENT PUBLIC SCOPING MEETING

Date and time	Location	Phone
December 3, 2002 at 7 p.m	I.T. Parker Community Center, 901 N.E. Third Street, Dania Beach, FL 33004.	(916) 973–4703

The public meeting is designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Prior to the start of the meeting, company representatives will be available to informally discuss the project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the Draft EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

On the morning of December 4th, the staff will be visiting some project areas. At this time, we are still coordinating the logistical arrangements for the site visit. Anyone interested in participating in a site visit may contact the Commission's Office of External Affairs (866–208–FERC) for more details. Individuals must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).4 Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in , to express their interest in becoming cooperating agencies for the preparation of the .

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC, or on the FERC Internet website (*http://www.ferc.gov)*using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29854 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–2–000]

Energy West Development, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Shoshone Pipeline Conversion Project and Request for Comments on Environmental Issues

November 19, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of a proposal by Energy West Development, Inc. (EWD) to convert a 30-mile-long segment of an existing pipeline to natural gas service.[1] This pipeline, referred to as the ''Shoshone Pipeline,'' is 6 inches in diameter and extends between a point north of Cody, Parker County, Wyoming, and a point northwest of Warren, Carbon County, Montana.[2] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice EWD provided to affected landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is

[1] EWD's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The pipeline was constructed in 1960 to transport liquid petroleum products. It was previously owned by Montana Power Company, and has not been in use for at least the last 7 years.

available for viewing on the FERC Internet website (*http://www.ferc.gov*).

Summary of the Proposed Project

EWD wants to convert about 30 miles of an existing pipeline in northern Wyoming and southern Montana to natural gas service. The conversion would enable EWD to transport about 13,500 million Btus of natural gas per day between an interconnection with Energy West Wyoming at the north city gate of Cody, Wyoming, and an interconnection with a pipeline owned by Montana Power Company northwest of Warren, Montana. The general location of the project facilities is shown in appendix 1.[3] EWD states that it already owns and possesses all necessary rights-of-way for operation of the Shoshone Pipeline.

The only construction associated with the conversion project would be the installation of a metering facility at the northern terminus of the pipeline. The metering facilities would be located in an area measuring about 30 feet wide by 80 feet long on EWD's existing right-of-way in section 17, township 8 south, range 25 east in Carbon County, Montana. The facilities would consist of a meter, related aboveground equipment, and an aboveground skid-mounted building to house electronics. The meter itself would be installed between two existing flanged risers. The area would be fenced and gravel applied to the ground surface. No excavations would be required.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1, PJ–11.1.
- Reference Docket No. CP03–2–000.
- Mail your comments so that they will be received in Washington, DC on or before December 20, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet website also provides access to the texts of formal documents issued by the

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[4] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

[5] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

Commission, such as orders, notices, and rulemakings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–29855 Filed 11–22–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7413–4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for the ENGAGE Plant Modification, Dow Chemical Company Plaquemine, Iberville Parish, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: This notice announces that the EPA Administrator has denied the petition to object to a state operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) for the ENGAGE plant modification at Dow Chemical Company in Plaquemine, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioner may seek judicial review of this petition response in the United States Court of Appeals for the Fifth Circuit. Any petition must be filed within 60 days of the date this notice appears in the **Federal Register**, pursuant to section 307(d) of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm.*

FOR FURTHER INFORMATION CONTACT: Bonnie Braganza, Air Permitting Section, Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7340, or e-mail at *braganza.bonnie@epa.gov.*

SUPPLEMENTARY INFORMATION: The Clean Air Act (Act) affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Suzanne Dickey and Eric Rochkind submitted a petition on behalf of the Louisiana Environmental Action Network (LEAN or Petitioner), requesting that the Administrator object to a modified title V operating permit issued by the Louisiana Department of Environmental Quality (LDEQ) to Dow Chemical Company (Dow), for the construction of a new production train—the Engage train—at Dow's existing facilities in Plaquemine, Iberville Parish, Louisiana.

The petition requests that the Administrator object to the Dow permit based on the following grounds: (1) The offset credits required by the Nonattainment New Source Review regulations are invalid because the baseline used to calculate the credits was flawed; (2) The offset credits were not valid because the reductions were not surplus to legally required reductions at the time of proposed use, as required by Section 173(c)(2) of the Act; (3) The offset credits were based on reductions previously used or relied upon by the State of Louisiana to meet the 15% Rate of Progress requirements under Section 182(b)(1) of the Act; (4) The offset credits were not identified with sufficient specificity to inform the public of the basis of the credits; (5) The offset credits are invalid because the Louisiana emission reduction credit bank has not required emissions to be surplus at the time of use and has not maintained an accurate accounting of credit balances; (6) LDEQ should confiscate the Louisiana emission reduction credit bank in implementing approved contingency measures pursuant to Sections 172(c)(9) and 182(c)(8) of the Act; (7) The Dow emission reduction credit application is invalid because it fails to meet the requirements of the Louisiana emission reduction banking rules; (8) A new facility in the Baton Rouge nonattainment area will hinder reasonable further progress toward achieving the ozone standard in violation of Sections 172, 173, and 182 of the Act; and (9) The Dow permit fails to satisfy the alternative sites analysis required by Section 173(a)(5)of the Act and state law.

On October 30, 2002, the Administrator issued an order denying the petition. The order explains the reasons for the Administrator's decision.

Dated: November 13, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–29887 Filed 11–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7413–2]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grants Funding Guidance for State and Tribal Response Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept proposals on November 25, 2002, for grants to supplement State and Tribal Response Programs cleanup capacity. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with State and tribal officials in developing this guidance.

Since 1997, the EPA Brownfields program has been funding state and tribal response programs including Superfund Core funding for state and tribal voluntary cleanup programs and pre-remedial site assessment funding for state- and tribal-conducted Targeted Brownfields Assessments (TBA). Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that build capacity for state and tribal response programs as well as authority to grant funds to states and Indian tribes to capitalize revolving loan funds and support insurance mechanisms. One goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and another is to provide funding for other activities that increase the number of response actions conducted or overseen, by a state or tribal response program.

This funding is not intended to supplant current state or tribal funding

for their response programs. Instead, it is to supplement their funding to increase their cleanup capacity.

For fiscal year 2003, EPA will consider funding requests up to a maximum of $1.5 million per state or Indian tribe. EPA will target funding of at least $1 million per year for tribal response programs to ensure adequate funding for tribal response programs.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to states and Indian tribes as they apply for and carry out these grants.

DATES: This action is effective as of November 25, 2002. EPA expects to make non-competitive grant awards to states and Indian tribes which apply during fiscal year 2003.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters are provided at *http://www.epa.gov/brownfields.*

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: The Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, by adding section 128(a). Section 128(a) authorizes a $50 million grant program [1] to establish and enhance state [2] and tribal [3] response programs. Generally, these response programs address the assessment, cleanup and redevelopment of brownfields sites and other contaminated sites. Section 128(a) grants will be awarded and administered by U.S. Environmental Protection Agency (EPA) regional offices. This document provides guidance that will enable states and tribes to apply for and use section 128(a) funds in Fiscal Year 2003.

State and tribal response programs oversee cleanup at the majority of brownfield sites across the country. Many states have programs that also offer accompanying financial incentive programs to spur cleanup and redevelopment. In passing section 128(a), Congress recognized the accomplishments of state response programs in cleaning up and redeveloping brownfield sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with states and Indian tribes.

Since 1997, the EPA Brownfields program has been funding state and tribal response programs including Superfund Core funding for state and tribal voluntary cleanup programs and pre-remedial site assessment funding for state- and tribal-conducted Targeted Brownfields Assessments (TBA). Both activities were financed with Superfund appropriations and funded under CERCLA section 104(d) cooperative agreement authority. Through section 128(a), Congress built upon these activities and provided EPA with expanded authority to fund other activities that build capacity for state and tribal response programs as well as authority to grant funds to states and Indian tribes to capitalize revolving loan funds and support insurance mechanisms. One goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and another is to provide funding for other activities that increase the number of response actions conducted or overseen, by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their cleanup capacity.

As partners in implementing SBLRBRA, state and tribal officials have been working closely with EPA since the law's passage in developing this guidance. It reflects comments made by state and tribal officials during legislation implementation meetings, including ongoing State and Tribal Funding Workgroup conference calls, a panel at the National Tribal Conference on Environmental Management on June 5, 2002, and EPA listening sessions. In addition, EPA received letters dated February 21, 2002, from the Association of State and Territorial Solid Waste Management Officials CERCLA Research Center and another dated May 6, 2002, from the Executive Director of the Tribal Association on Solid Waste and Emergency Response. These comments were taken into account when preparing the guidance.

Subject to the availability of funds, EPA regional enforcement and program staff will be available to provide technical assistance to states and Indian tribes as they apply for and carry out section 128(a) grants.

Eligibility for Funding

To be eligible to receive funding under CERCLA section 128(a), a state or Indian tribe must demonstrate that their response program includes, or is taking reasonable steps to include, the four elements of a response program, described below. Congress also recognized the effectiveness and efficiencies of Memoranda of Agreement (MOAs) by making states or Indian tribes that are parties to voluntary response program MOAs [4] automatically eligible for section 128(a) funding. Additionally, states and Indian tribes, including those with MOAs, must maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year in order to qualify for section 128(a) funding.

With the exception of the section 128(a) funds a state or Indian tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA 104(k)(3), states and Indian tribes are not required to provide matching funds for grants awarded under section 128(a).

Section 128(a) authorizes funding for activities necessary to establish and enhance the four elements and to meet the public record requirement.

The Four Elements—Section 128(a)

a. *Timely survey and inventory of brownfield sites in the state or in the tribal land.* States and Indian tribes must include, or be taking reasonable steps to include, in their response programs a system or process to identify the universe of brownfield sites in their state or tribal land. EPA's goal in funding activities under this element is to enable the state or Indian tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfields in their jurisdictions. Given funding limitations, EPA will negotiate work plans with states and Indian tribes to achieve this goal efficiently, effectively and within a realistic time frame. For example, many of EPA's Brownfields Assessment grantees conduct

[1] EPA is in the process of developing a Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Programs grant program.

[2] "The term "state" is defined in this document as defined in CERCLA section 101(27).

[3] The term "Indian tribe" is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the **Federal Register** notice at 67 FR 67181, are also eligible for funding under CERCLA 128(a).

[4] The legislative history of SBLRBRA indicates that Congress intended to encourage states and Indian tribes to enter into MOAs for their voluntary response programs. Currently the following states have MOAs for their voluntary response programs: Arkansas, Colorado, Delaware, Florida, Illinois, Indiana, Kansas, Maryland, Michigan, Minnesota, Missouri, New Mexico, Ohio, Oklahoma, Rhode Island, Texas, Virginia, Wisconsin, and Wyoming.

inventories of brownfield sites in their communities or jurisdictions. States and Indian tribes are encouraged to work with these grantees to obtain the information that they have gathered and include it in their survey and inventory.

b. *Oversight and enforcement authorities or other mechanisms and resources.* States and Indian tribes must include, or be taking reasonable steps to include, in their response programs oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that a response action will protect human health and the environment and be conducted in accordance with applicable federal and state law. In addition, states and Indian tribes must include, or be taking reasonable steps to include, in their response programs oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that the necessary response activities are completed if the person conducting the response activities, including operation and maintenance or long-term monitoring activities, fails to complete the activity (such as enforcement, funding, or other programmatic resources, including staff).

c. *Mechanisms and resources to provide meaningful opportunities for public participation.*[5] States and Indian tribes must include, or be taking reasonable steps to include, in their response programs mechanisms and resources for public participation, including, as a minimum:

- Public access to documents and related materials that a state, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;
- Prior notice and opportunity for public comment on cleanup plans and site activity; and
- A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.

d. *Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete.* States and Indian tribes must include, or be taking reasonable steps to include, in their response programs mechanisms to approve cleanup plans. In addition states and Indian tribes must include, or be taking reasonable steps to include, in their response programs a requirement for verification by and certification or similar documentation from the state, the Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response action is complete.

Public Record Requirement

States and Indian tribes (including states with MOAs) that receive funding under section 128(a) must establish a public record system during the grant funding period unless a public record system that meets the following requirements is already established. Specifically, under section 128(b)(1)(C), states and Indian tribes must:

- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;
- Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and
- Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy.

Section 128(a) funds may be used to maintain and make available a public record system that meets these requirements.

It is important to note that the public record requirement differs from the ''timely survey and inventory'' element described above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the ''timely survey and inventory'' element described above, refers to a general approach to identifying brownfield sites.

EPA's goal is to enable states and Indian tribes to make the public record easily accessible. For this reason, EPA will allow states and Indian tribes to use section 128(a) funding to make information on sites in their response programs available to the public on the Internet or other means that ensures that the information is readily accessible to the public. For example, the Agency will fund state and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.[6] EPA encourages states and Indian tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long term maintenance of the public record in their work plans.[7]

Use of Funding

General Uses

Section 128(a)(1)(B) describes the eligible uses of grants funding by states and Indian tribes. In general, a state or Indian tribe may use a grant to ''establish or enhance'' their response programs, including elements of the response program that include activities related to responses at brownfield sites with petroleum contamination. States and Indian tribes may use Section 128(a) funding to develop legislation, regulations, procedures, guidance, *etc.* that would establish or enhance the administrative and legal structure of their response programs. In addition, states and Indian tribes may use grant funding to:

Capitalize a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and grant terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20% match on the amount of section 128(a) funds used for the RLF, a prohibition on using EPA grant funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply.

Purchasing environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program.

In addition, a state or Indian tribe may use section 128(a) funding to establish and maintain the required public record described in section B above. EPA considers activities related to maintaining and monitoring

[5] States and Indian tribes establishing this element may find useful information on public participation on EPA's community involvement web site at *http://www.epa.gov/superfund/action/community/index.htm.*

[6] For further information on latitude and longitude information, please see EPA's data standards web site available at *http://oaspub.epa.gov/edr/epastd$.startup.*

[7] States and Indian tribes may find useful information on institutional controls on EPA's institutional controls web site at *http://www.epa.gov/superfund/action/ic/index.htm.*

institutional controls to be eligible costs under section 128(a).

Uses Related to Establishing a State or Tribal Response Program

Under CERCLA section 128(a), ''establish'' includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For more developed state or tribal response programs, establish may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA section 128(b)(1)(C).

Uses Related to Enhancing a State or Tribal Response Program

Under CERCLA section 128(a), ''enhance'' is related to activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under a state or tribal response program. The legislative history of the provision also makes this clear:

> The vast majority of contaminated sites across the nation will not be cleaned up by the Superfund program. Instead, most sites will be cleaned up under State authority. * * * In recognition of this fact, and the need to create and improve State cleanup capacity, new [section 128(a)] provides financial assistance to States and Indian tribes to establish or enhance voluntary response programs.

Senate Report 107–2, March 12, 2001, p. 15.

The exact ''enhancement'' uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the state or Indian tribe. For example, regional offices and states or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. Other ''enhancement'' uses may be allowable as well.

Uses Related to Site-Specific Activities

States and Indian tribes may use section 128(a) funds for activities that improve state or tribal capacity to increase the number of sites at which response actions are conducted under the state or tribal response program. Eligible uses of funds include site-specific related activities such as conducting assessments at selected brownfields sites. Section 128(a) funds cannot be used for assessments at sites that do not meet the definition of brownfields site at CERCLA 101(39).

Costs incurred for oversight of cleanups at other than brownfields sites may be eligible and allowable costs if such activities are included in the state's or Indian tribe's work plan. For example, auditing of completed site cleanups in states or tribes that use licensed site professionals to verify that sites have been properly cleaned up may be an eligible cost under section 128(a). These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the state's or Indian tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the state or Indian tribe.

Uses Related to Petroleum Response Programs and Site-Specific Activities at Petroleum Sites

Many state response programs do not distinguish between sites contaminated with hazardous substances, contaminants or pollutants and sites contaminated with petroleum. Therefore, states and Indian tribes may use section 128(a) funds for activities that establish and enhance their response programs, even if their response programs address petroleum contamination. Also, the costs of conducting site assessments at petroleum contaminated brownfield sites, as defined at CERCLA section 101(39)(D)(ii)(II), are eligible and are allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or Indian tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3).

Grant Mechanism and Process for Awarding Funding

Funding authorized under CERCLA section 128(a) will be awarded through a cooperative agreement [8] with a state or Indian tribe. The program will be administered under the general EPA grant and cooperative agreement regulations for states, Indian tribes, and local governments found in the Code of Federal Regulations at 40 CFR part 31. Under these regulations, the grantee for section 128(a) grant program is:

> the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

40 CFR 31.3 Grantee.

Subject to the availability of funds, EPA regional offices will negotiate and enter into new section 128(a) cooperative agreements with eligible and interested states or Indian tribes. EPA will accept only one application, and negotiate only one work plan, with each eligible state or Indian tribe. States and tribes must define the ''section 128(a) response program,'' and may designate a component of the state or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's grants policies. Each cooperative agreement must have an annual budget period tied to an annual work plan.

As part of the annual work plan negotiation process, states or Indian tribes that do not have MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described above. EPA will not fund, in future years, state or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, or on EPA's review of the state or tribal response program.

Prior to funding a state's or Indian tribe's annual work plan, EPA regional offices will verify that a public record as described above exists, and is being maintained.

Allocation System for Distribution of Funding

EPA regional offices will work with interested states and Indian tribes to develop their annual work plans and funding requests. For Fiscal Year 2003, EPA will consider funding requests up to a maximum of $1.5 million per state or Indian tribe. This limit may be changed in future years based on appropriation amounts and demand for funding. The EPA regional offices will forward each of the funding request

[8] A cooperative agreement is a grant to a state or Indian tribe that includes substantial involvement of EPA during performance of activities described in cooperative agreement work plan. Examples of this involvement include technical assistance and collaboration on program development and site-specific activities.

amounts and a short summary of the work plan activities to EPA Headquarters. EPA Headquarters will compile the requested amounts and develop the annual allocation based on state and tribal response program needs described in the work plan summaries.

When EPA Regions negotiate individual state and tribal work plans, it is anticipated that funding will be prioritized as follows.

1. Funding for program development activities to establish or enhance the four elements of a state or tribal response program and to enable states and Indian tribes to comply with the public record requirement, including activities related to institutional controls. States with MOA's will not be prejudiced in funding distributions if their work plan does not include tasks related to establishing or enhancing the four elements. Similarly, states and Indian tribes that have established one or more of the four elements will not be prejudiced in funding distributions if their work plan includes activities that enhance the four elements.

2. Funding for other program development activities to enhance the cleanup capacity of a state or tribal response program.

3. Funding for site-specific activities that enhance the cleanup capacity of a state or tribal response program, including targeted brownfields site assessments.

4. Funding for environmental insurance mechanisms.

5. Funding to capitalize brownfields cleanup revolving loan funds.

States and Indian tribes must break their work plans down into these prioritization categories.

EPA will target funding of at least $1 million per year for tribal response programs. If this funding is not used, it will be carried over and added to at least $1 million in the next fiscal year. It is expected that the funding demand from Indian tribes will increase through the life of this grant program (authorized by Congress through FY2006), and this funding allocation system should ensure that adequate funding for tribal response programs is available in future years.

Terms and Reporting

Cooperative agreements for state and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities.

States and Indian tribes will provide progress reports under 40 CFR 31.40, in accordance with terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) grant. As a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state's or Indian tribe's accomplishments with section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four elements of the state's or tribe's response program. All recipients must provide information relating to establishing and maintaining the public record.

Depending upon the activities included in the state's or Indian tribe's work plan, an EPA regional office may request that a progress report include:

A list of sites at which response actions have been completed including:

- Date the response action was completed.
- Site name.
- Location of the site (street address and latitude and longitude).
- Size of the site in acres.
- An indication if the site is suitable for unrestricted use or if institutional controls were relied on in the remedy.
- Nature of the contamination at the site.

A list of sites currently being addressed by the state or tribal response program including:

- Site name.
- Location of the site (street address and latitude and longitude).

Data regarding the result of the state's or tribe's mechanism for verification by, or certification by the state or tribe, or similar documentation, indicating that the response action is complete. For example, the state or tribe may provide data regarding cleanup completion certificates issued and revoked.

If the state or Indian tribe is using section 128(a) funding to capitalize a revolving loan fund for brownfields cleanup under CERCLA section 104(k)(3), they must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF grants.

If the state or Indian tribe is using section 128(a) funding for environmental insurance, they must include in their progress report information on the number of policies purchased, the number of sites covered, and the amount of money spent.

If the state or Indian tribe is using section 128(a) funding to conduct brownfields site assessments, they must include in their progress report a list of sites at which site assessments have been completed that includes:

- Site name.
- Location of the site (street address and latitude and longitude).
- Size of the site in acres.
- Date site assessment was completed.
- Nature of contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc. * * *).

If the state or Indian tribe is using section 128(a) funding to perform other site-specific related activities (*e.g.*, oversight audits of licensed site professional certified cleanups, etc. * * *), they must include a description of the site-specific activities and the number of sites at which the activity was conducted.

The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow states or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to states and Indian tribes.

Dated: November 18, 2002.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 02–29886 Filed 11–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7412–8]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Pub. L. 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB).

DATES: The meeting will be held on Thursday, December 12, 2002, from 8 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 315 Julia Street, New Orleans, LA 70130 (504–525–1993).

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda is attached.

The meeting is open to the public.

Dated: November 18, 2002.

Gloria D. Car,

Designated Federal Officer.

Gulf of Mexico Program

Policy Review Board Meeting

Embassy Suites Hotel, Bayou Jean Lafitte Rooms, 6th Floor, New Orleans, Louisiana, Thursday, December 12, 2002.

Agenda

7:30—Continental Breakfast (in meeting room).

8:30—Welcome and Introductions, Jimmy Palmer, EPA Regional Administrator, Region 4, Atlanta Hall Bohlinger, Acting Secretary, LA Department of Env. Quality.

8:40—Overview of Meeting Agenda & Objectives, Status Review of Follow-up Action Items, Bryon Griffith, Gulf of Mexico Program Office.

9:00—Harmful Algal Blooms Observing System Pilot Project Status, Dr. Bill Benson, Director, EPA ORD's Gulf Ecology Division Laboratory.

Purpose: To receive an update on the progress of the Hazardous Algal Blooms Observing System (HABSOS) pilot.

9:45—Bacterial Source Tracking Research, Dr. R.D. Ellender, Assistant Dean for Research & Development, College of Science & Technology, University of Southern Mississippi.

Purpose: To receive an overview of the current state of the research in this topic area and to solicit broad Gulf State involvement in a collaborative EPA Region 4 and University of Southern Mississippi initiative to provide Gulf State coordination and support for applied Bacterial Source Tracking research.

10:30—Break.

10:45—GMP Mercury Project Update—re: Gulf State Marine Fish Advisory Consistency Dr. Fred Kopfler, Gulf of Mexico Program Office.

Purpose: To receive an update on the status of the GMP initiative to achieve consistent marine fish advisories re: Mercury in Gulf Seafood.

11:15—President's Interagency Work Group on Mercury Presentation, Gene Whitney, Policy Analyst, Office of Science & Technology Policy, Executive Office of the President.

Purpose: To receive an Executive Briefing on the development and status of President's Interagency Workgroup on Mercury and their future plans relative to the Gulf of Mexico region.

12:00—Catered Lunch—2002 Gulf Guardian Awards Video Presentation.

12:45—Presidential Executive Order Recommendations—Final Review, Bryon Griffith, Gulf of Mexico Program Office.

Purpose: (1) To conduct the final review of the Management Committee's recommendations regarding the proposed Presidential Executive Order establishing the Gulf of Mexico Program; (2) To discuss and finalize a supporting implementation strategy and schedule for submitting the Executive proposal to the EPA Administrator.

1:30—GMP's Assistance Role in the Advancing Development and Deployment of NASA's Space-based Earth Sciences Support, Dr. David Powe, Director, Earth Science Applications Directorate, NASA, Stennis Space Center, Mississippi.

Purpose: To explore stronger partnership opportunities through NASA's Space-based Earth Science Applications Development Program.

2:00—Hypoxia Action Plan Status: Lower Mississippi River Sub-basin Team Development Report (Agricultural Sector)—Lower Mississippi Valley Initiative's (LMVI) Watershed Approach, Invited speaker.

Purpose: To receive an update on the status of the Lower Mississippi River Sub-basin Team's development re: Agriculture's organization (*e.g.*, LMVI) and process (*i.e.*, Watershed Approach) approach to addressing many of the sub-basin's industry led solutions.

2:30—Wrap-up and next steps, Jimmy Palmer and Hall Bohlinger.

2:35—Adjourn .

[FR Doc. 02–29885 Filed 11–22–02; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress,

TIME AND PLACE: Tuesday, December 10, 2002, at 10 am to 1 pm. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW. Washington, DC 20571.

AGENDA: Agenda items include reports and discussion on proposed revisions to Ex-Im Bank's Economic Impact Procedures, discussion on the Advisory Committee's Sub-Committees, and the presentation of the Advisory Committee's recommendations to Ex-Im Bank.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to December 3, 2002, Nichole Westin, Room 1257, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further incormation, contact Nichole Westin, Room 1257, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3542.

Peter Saba,

General Counsel.

[FR Doc. 02–29878 Filed 11–22–02; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL ELECTION COMMISSION

[Notice 2002–23]

Filing Dates for the Hawaii Special Election in the 2nd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Hawaii has scheduled a special election on January 4, 2003, to fill the U.S. House of Representatives seat in the Second Congressional District to which the late Representative Patsy T. Mink was reelected on November 5, 2002.

Committees participating in the Hawaii special election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates participating in the Hawaii Special General shall file a 12-day Pre-General Report on December 23, 2002; and a 30-day Post-General Report on February 3, 2003. (*See* chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political Committees that file on a quarterly basis in 2002 are subject to special election reporting if they make previously undisclosed contributions or

expenditures in connection with the Hawaii Special General Election by the close of books for the applicable report(s). (*See* chart below for the closing date for each report).

Since disclosing financial activity from two different calendar years on one report would conflict with the calendar year aggregation requirements stated in the Commission's disclosure rules, unauthorized committees that trigger the filing of the Post-General Report will be required to file this report on two separate forms. One form to cover 2002 activity, labeled as the Year-End Report; and the other form to cover only 2003 activity, labeled as the Post-General Report. Both forms must be filed by February 3, 2003.

Committees filing monthly that support candidates in the Hawaii Special General should continue to file according to the monthly reporting schedule.

CALENDAR OF REPORTING DATES FOR HAWAII SPECIAL ELECTION

Report	Close of Books [1]	Reg./cert. mailing date [2]	Filing date
Committees Involved In The Special General (01/04/03) Must File:			
Pre-General	12/15/02	12/20/02	12/23/02
Year-End	([3])	([3])	([3])
Post-General	01/24/03	02/03/03	02/03/03

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] Waived.

Dated: November 19, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–29880 Filed 11–22–02; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1440–DR]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1440–DR), dated November 8, 2002, and related determinations.

EFFECTIVE DATE: November 8, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated November 8, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from an earthquake on November 3, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will be also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Fairbanks North Star Borough, Denali Borough, Matanuska-Susitna Borough, the Regional Education Attendance Areas of Delta Greely, Alaska Gateway, Copper River and Yukon-Koyukuk, and the cities of Tetlin, Mentasta Lake, Northway, Dot Lake, Chistochina, Tanacross and the unincorporated communities of Slana and Tok for emergency protective measures (Category A) and debris removal (Category B) under the Public Assistance program.

All areas within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–29868 Filed 11–22–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 2002:

Liberty and Montgomery Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–29869 Filed 11–22–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: December 5, 2002.

Place: Building J, Room 107, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Time: 10:30 a.m. General Meeting, 1:30 p.m. Counter-terrorism Subcommittee, 2:30 p.m. Ambulance Design Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; Counter-terrorism Subcommittee report; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, December 3, 2002, via mail at NATEK Incorporated, 4200–G Technology Court, Chantilly, Virginia 20151, or by telephone at (703) 818–7070, or via facsimile at (703) 818–0165, or via e-mail at *proman@natekinc.com.* This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 10:30 a.m. until 4:00 p.m. Members should call in around 10:30 a.m. The number is 1–800–320–4330. The FICEMS conference code is ''11.'' If you plan to call in, you should just enter the number ''11''—no need to hit any other buttons, such as the star or pound keys. The same dial in phone number and conference code can be used for the 1:30 p.m. Counter-terrorism Subcommittee and 2:30 p.m. Ambulance Design Subcommittee meetings.

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on March 6, 2003. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the March 6, 2003 FICEMS Committee Meeting.

Dated: November 14, 2002.

R. David Paulison,

U.S. Fire Administrator, United States Fire Administration.

[FR Doc. 02–29870 Filed 11–22–02; 8:45 am]

BILLING CODE 6718–08–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–14]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: A Community-based Intervention Model to Promote Neighborhood Participation in the Reduction of *Aedes aegypti* Larval Indices in Puerto Rico—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). The *Aedes aegypti* mosquito transmits dengue, a mosquito-borne viral disease of the tropics. The symptoms of dengue disease include fever, headache, rash, retro-orbital pain, myalgias, arthralgias, nausea or vomiting, abdominal pain, and hemorrhagic manifestations.

Since there is no vaccine available to prevent dengue, prevention efforts are directed to control the vector mosquito. The limited efficacy of insecticides in preventing disease transmission has prompted the search for new approaches involving community participation.

Research in Puerto Rico, where dengue is endemic and intermittently epidemic, has shown that levels of awareness about dengue are very high in the population and that the next step should be the translation of this knowledge into practice (behavior change). To achieve this goal a model of community participation to prevent and control dengue should be developed. This model of community participation must be an effectively implemented prevention project.

The objective of the dengue prevention project is to develop and evaluate a community-based participation intervention model that will reduce *Aedes aegypti* infestation in a community in Puerto Rico. To accomplish this two comparable communities in the San Juan, Puerto Rico area will be selected for this study. One community will be a ''control community'' and the second community will be an ''intervened community.'' Entomologic surveys and person-to-person interviews to assess knowledge, attitudes, and practices (KAP) will be conducted during the project in both communities. The entomologic surveys and person-to-person interviews will be conducted 3 times during the project: the beginning of the project, the end of the first year of the project, and 18 months after the beginning of the project.

An additional interview will also be conducted in the intervened community to assess the function and significance of artificial containers that hold water. An ethnographic assessment will be performed to determine the resources and needs of the intervened community. The specific dengue prevention activities that the intervened community will perform will be based on results of the initial entomologic survey, KAP, function and significance of artificial containers, and the ethnographic assessment of the community. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Intervened Community	100	4	45/60	300
Control Community	100	3	45/60	225
Total				525

Dated: November 15, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 02–29803 Filed 11–22–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03017]

Systems-Based Diabetes Prevention and Control Programs (DPCPs); Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number (CFDA)

This program is authorized under section 301(a) and 317(k)(2)of the Public Health Service Act, (42 U.S.C. section 241(a) and 247b(k)(2), as amended). The Catalog of Federal Domestic Assistance number is 93.988.

B. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Systems-Based Diabetes Prevention and Control Programs (DPCPs). This program addresses the ''Healthy People 2010'' focus areas of Diabetes, Immunization, Access to Quality Health Services, Chronic Kidney Disease, Heart Disease and Stroke, Vision and Hearing, Nutrition and Overweight, Physical Activity and Fitness, and Public Health Infrastructure.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): Increase the capacity of state diabetes control programs to address the prevention of diabetes and its complications at the community level.

The Program will continue to emphasize prevention of complications and premature mortality among people with diabetes (*i.e.* secondary and tertiary prevention). Further, the Program will continue to incorporate a model of influence by linking new programs and existing programs that support social and environmental policies for the promotion of wellness in both people with diabetes, and those at risk for diabetes. In the future, CDC plans (pending available resources) to turn increasing attention to the identification and dissemination of lifestyle interventions proven to be effective in preventing or delaying Type 2 diabetes among people with impaired fasting glucose or impaired glucose tolerance.

For additional background information please see attachment II of this announcement as posted on the CDC web site at: *www.cdc.gov.*

C. Eligible Applicants

Assistance will be provided only to the health departments of states or their *bona fide* agents, and Territories, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Competition is limited to health departments or their *bona fide* agents because they are uniquely positioned to perform, oversee and coordinate diabetes prevention and control activities in public health settings and as part of a larger public health system. All States and Territories are currently receiving funding for diabetes programs under prior CDC announcements 97064, 98034, and/or 99078.

(**Note:** Throughout this document the use of the term ''State'' or ''statewide'' also refers to the Territories described above.)

For the first year, states currently receiving CDC funds for Comprehensive Programs (funded under program announcements 97064, 98034, and 99078) are entitled to apply for Comprehensive Program funding only.

States currently receiving CDC funds for Core Programs (funded under program announcement 99078) are eligible to apply for either Core or Comprehensive Program funding. Applicants will receive only a Core or Comprehensive award.

Current Core programs applying for Core funding will undergo a technical review of their application and will be funded pending receipt and approval of a technically acceptable application.

Current Comprehensive Programs and Core Programs applying for Comprehensive funding must submit an application which will undergo a competitive review process by an independent objective review panel. As a contingency, currently funded Core programs applying for Comprehensive awards should submit two separate work plans, with budget line items and budget justifications, one for a Core Program and one for a Comprehensive Program.

All applications received from current grant recipients under Program Announcements 97064, 98034, and 99078 will be funded for either a Core or a Comprehensive Program.

After the first year, Tier 2 DPCPs (see explanation of Tier 2 in section ''E. Program Requirements'') will be eligible to compete for Special Projects of National Significance based on availability of funds in years two through four. Eligibility will be limited to high performing Tier 2 DPCPs that demonstrate multi-system integration of public health services and partnerships into a comprehensive, highly functioning, and accountable program. A number of key innovative strategies, implemented by these DPCPs, have been sustained or institutionalized, documented in public health reports or scientific literature and disseminated to other programs as appropriate.

Note: Public Law 104–65 states that an organization described in section 501(c) (4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, loan or any form.

D. Funding

Availability of Funds

Approximately $23 million is available in FY 2003 to fund 59 awards. It is estimated that approximately $10 million will be available to fund approximately 41 Core awards. It is expected that the average federal contribution to the Core award will be $244,000, ranging from $50,000 to $400,000. Approximately $13 million will be available to fund approximately 18 Comprehensive awards. It is expected that the average federal contribution to the Comprehensive award will be $725,000 ranging from $400,000 to $900,000.

It is expected that the awards will begin on or about March 30, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may vary depending on availability of funds.

Continuation awards within an approved project period will be made on the basis of satisfactory demonstration of accomplishment of proposed activities, performance improvement plans and results, and the availability of funds.

Direct Assistance

You may request Federal personnel as direct assistance, in lieu of a portion of financial assistance.

Use of Funds

Resources available under this program announcement may not be used to: (1) Support direct patient care services, screening services, individual health services, or the treatment of diabetes; (2) duplicate existing efforts the federal system has established for outpatient diabetes education reimbursement for the Medicare population through the Diabetes Education Program Recognition administered by the Centers for Medicaid and Medicare Services (CMS); or (3) supplant existing State or Federal funding including the Preventive Health and Health Service block grant or other sources.

Programs that have adequately addressed the program key components (*see* attachment IV of this announcement as posted on the CDC web site) and are high performing comprehensive (or Tier 2 in years 2–5) programs may dedicate a portion of the resources available under this program announcement to conduct research projects. Funded research projects involving human subjects will be governed by 45 Code of Federal Regulations, part 46.

Applicants are encouraged to identify and leverage opportunities which will enhance their work with other State health department programs that address related chronic diseases or risk factors. This may include cost sharing to support shared staff positions, such as a chronic disease epidemiologist, program evaluator, health communication specialist, etc. Other cost sharing activities that cut across chronic disease programs and are directly related to recipient program activities may also be appropriate.

Recipient Financial Participation

Matching funds are required for this program. Matching funds are required from non-Federal sources in an amount not less than $1 for each $5 of Federal funds awarded to Core programs and; $1 for each $4 for Comprehensive programs. The matching funds may be cash or its equivalent in-kind or donated services, fairly evaluated. The contribution may be made directly or through donations from public or private entities. Match requirements may change for Tier levels in years two through five. Matching funds must be consistent with the work plan activities that are submitted and approved.

Matching funds may not be met through: (1) The payment of treatment services or the donation of treatment, or direct patient diabetes education services; (2) services assisted or subsidized by the Federal Government; or (3) the indirect or overhead of an organization.

Funding Preference

Due to resource limitations, preference in funding Comprehensive Programs will be given to states with:

1. A larger burden of diabetes and related complications.
2. A larger proportion of residents experiencing racial and ethnic disparities in diabetes prevalence and diabetes related complications.
3. Varied geographic representation across the United States.
4. Varied distribution of population density among funded programs.

E. Program Requirements

In conducting activities to achieve the purpose of this program, both Core and Comprehensive DPCPs will be responsible for the activities under 1. Recipient Activities (except where otherwise noted), and CDC will be responsible for the activities under 2. CDC Activities. It is expected that Comprehensive Programs will demonstrate a more intensive level of effort in each category of recipient activities.

1. Recipient Activities

a. Define the burden of diabetes in a manner that informs and influences public health decision making: Maintain a state specific diabetes surveillance system. This should be accomplished through previously established surveillance systems and ensuring that the Behavioral Risk Factor Surveillance System (BRFSS), Diabetes Module (or other appropriate surveillance system for the Territories), is conducted yearly. Yearly administration of the Diabetes Module is a requirement. The surveillance system should support and inform public health decision making. At a minimum, this data should be used to generate performance-based outcome measures specific to recommended foot and eye exams, immunizations, and

annual Hemoglobin A1C (A1C) tests. It should also be used to guide program activities. Systems should monitor trends, disseminate data and information, and support evaluation efforts. Comprehensive Programs are expected to implement special surveillance strategies (*e.g.*, over-sampling, special surveys, sentinel surveillance systems) that address unmet surveillance needs.

b. Establish and maintain a presence for diabetes prevention and control within the State Health Department. Implement the following critical functions of fiscal management, performance management, program assessment, and strategic planning to carry out the program by working through the respective State and Territorial Health Department infrastructure.

(1). *Fiscal Management:* Develop a Fiscal Management system that supports the program. This system should have the following capacity: accurate and timely tracking of expenditures and sources of match support; accurate projection of categorical balances; and the prevention of excessive unobligated balances by having the flexibility to reallocate funds into appropriate budget categories if priorities change or if staffing patterns change. DPCPs need to establish linkages with appropriate state fiscal management staff, and develop a process for regularly assessing program needs and monitoring expenditures.

(2). *Performance Management:* The DPCP should engage health department leadership to develop a performance management system that incorporates capacity improvement processes and strategic accountability measures. For Comprehensive Programs, a written plan of this performance management system should be in place. This should assist health department officials to create accountability processes within state programs. This will enable them to introduce rewards for good performance and consequences for poor performance. The performance management system should also be linked to the evaluation system and the budget process.

(3). *Program Assessment:* DPCPs are expected to conduct reflective, partner-included assessments to identify strengths and needs in the DPCP's public health infrastructure. Efforts to strengthen identified essential public health services, deemed particularly important in achieving the program's goals, should follow the assessments by developing a performance improvement plan based on identified services that need strengthening. DPCPs will assess and continuously improve public health services so that policies and legislation related to issues such as access to quality care and environmental conditions encourage positive health outcomes. Further, DPCPs will support participatory community efforts promoting systems and community-based approaches aimed at increasing years of healthy life and eliminating the disproportionate burden of diabetes borne by particular racial and ethnic populations. The Ten Essential Public Health Services (*see* attachment III of this announcement as posted on the CDC web site) will provide the basis for assessment. More extensive involvement of partners state-wide is expected of Comprehensive Programs. State public health agencies may or may not be the lead agency for several specific essential public health services. In these cases, identifying the role of the state public health agency with a support role by the DPCP, will help in prioritizing the essential public health services most relevant to achieving the goals of the diabetes program. Performance improvement plans will be implemented in year two and beyond. DPCPs will be expected to demonstrate measurable results linked to performance improvement plans annually.

(4). *Strategic Planning:* Develop or update a State Diabetes Strategic Plan for diabetes prevention and control with the goal of advancing the prevention and control of diabetes and its complications, improving access to and the quality of diabetes services and care, and eliminating disparities between population groups. The DPCP and its partners should be involved in the development and implementation of the State Diabetes Strategic Plan. The State Diabetes Strategic Plan should also inform and guide the activities of the DPCP and its partners. As they become available, the results of the Assessment should guide the periodic update and improvement of the State Diabetes Strategic Plan. For Comprehensive Programs, the plan should be comprehensive in nature and reflective of the strategies and activities of the diabetes health system in the state.

c. *Program Design Enhancement:* Expand the current DPCP program model of influence. DPCPs should serve as a catalyst for change positively impacting people with diabetes, their families, and their communities. The DPCP should engage the State Diabetes Health System (SDHS) which includes the DPCP, the state health agencies and other health partners that contribute to diabetes services and programs at the state level, in this effort. Activities include the current population-based approaches for secondary and tertiary prevention for people with diabetes. All activities described must be relevant, complementary to, and consistent with ongoing national efforts such as the National Diabetes Education Program (NDEP), and with national priorities for eliminating racial and ethnic health disparities for diabetes. Core Program activities aligned with the ten essential public health services can include small scale pilots in selected geographic areas or statewide interventions. Comprehensive Programs are expected to have a wider scope of activities in all areas of influence. Comprehensive Programs must also develop public health activities that reach the entire State or implement an existing multifaceted intensive program in a limited geographical area within a defined target population. Allowable program activities that emerge from evolving science will be addressed in future guidance documents which will accompany each request for continuing application.

d. *Establish and Maintain Effective Partnerships:* Create a culture of shared responsibility with the SDHS and other nontraditional partners. The DPCP and partners should collectively plan, implement, and evaluate goals and objectives and align resources to priorities. The DPCP should engage the SDHS to measure the quality and effectiveness of collective efforts and the DPCP's ability to establish and maintain effective partnerships. The goal should be inclusiveness rather than exclusiveness to achieve synergistic results. Within the State Health Department, the DPCP should collaborate and coordinate with partners such as nutrition, physical activity, tobacco, cardiovascular health, maternal and child health, health promotion, PHHS block grant, State Minority Health Program, Office of Women's Health, Office On Aging, public information officer, as well as data partners such as vital statistics and the State's BRFSS. Comprehensive Programs must demonstrate a more extensive partnership base and more significant level of engagement with those partners.

e. *Evaluation:* Conduct ongoing monitoring and evaluation of diabetes prevention and control activities and strategies, including process and impact evaluation. State evaluation efforts should complement and be consistent with national program evaluation goals. Comprehensive Programs are expected to submit an evaluation methodology designed to demonstrate more in-depth, purposeful evaluation of program activities.

f. *Management Information System (MIS):* The MIS will be used for post

award administration, program monitoring, technical assistance, and programmatic decision making. Programs are expected to ensure that information is entered into the MIS in a timely manner. Office of Management and Budget (OMB) clearance for the data collection initiated under this cooperative agreement has been approved. (OMB No. 0920–0479. Expiration date 7/31/2003.)

g. *Protection of Human Subjects:* Ensure that program activities follow all applicable federal regulations concerning the protection of human subjects and the confidentiality of personally identifiable data.

Year One

DPCPs will be awarded as either Core or Comprehensive Programs for the first year.

1. Core programs are expected to establish and maintain a presence in the health department for diabetes prevention and control; define the burden of diabetes in the state and communicate it in a manner that informs and influences public health decision making; establish and maintain effective partnerships; develop a State Diabetes Strategic Plan; and engage in small scale pilots in accordance with program guidance.

2. Comprehensive programs are expected to meet all of the requirements of a Core program and implement statewide interventions or implement multifaceted intensive strategies in geographically defined targeted populations to reduce or eliminate the burden of diabetes.

Years Two Through Five

In subsequent years (years two through five), DPCPs will be placed in one of two Tier levels based on their performance as documented in the interim progress reports, and on the availability of funds. The award strategy is designed to support documented performance results from quality intervention and performance improvement plans. Awards will also be based on budget justification, alignment with CDC strategies, and the ability of a state to continuously execute performance improvement and intervention plans.

Tier 1

This Tier level is intended to support capacity-building programs by establishing a performance management system; a state team with multiple skill sets; an epidemiology-based State Diabetes Strategic Plan to achieve program goals; highly functioning, accountable partnerships; and program strategies and activities to reduce documented burden of diabetes. In this Tier, culturally relevant small-scale interventions at community and/or systems levels, with specific priority audiences in particular communities or geographic areas, are expected.

The performance expectations of this Tier include

1. Meeting minimum requirements outlined in the DPCP Key Components document (*see* attachment IV of this announcement as posted on the CDC web site).

2. Developing a performance improvement plan reflecting priority areas identified in the diabetes public health assessment which is based on the ten essential public health services.

3. Developing a work plan that meets program criteria (logic-modeled) with budget justification.

4. Providing evidence of results based on proximal performance measures which are anticipated to lead to the achievement of the CDC, Division of Diabetes Translation's (DDT's) National Objectives.

Tier 2

DPCPs in this Tier level have a broader-based program capacity supported by the elements of Tier 1, but with increasingly integrated and highly functional partnerships and measurable effects. Programs in this Tier systematically implement priority strategies and interventions in priority communities throughout the state, consistent with their State Diabetes Strategic Plan. They must have evidence of improvement in the diabetes public health infrastructure. Program impacts and results must be evident and measurable through the DPCP performance management system. They have also demonstrated national leadership, sharing lessons learned among local, state, and national partners.

The performance expectations of this Tier include:

1. Demonstrating quality activities linked to the Ten Essential Public Health Services with activities in each of the four indicators.

2. Demonstrating results in the implementation of improvement plans.

3. Meeting the expectations of Tier 1.

4. Developing a work plan that meets Tier 2 criteria (logic-modeled) with budget justification based on Tier 2 funding levels.

5. Demonstrating readiness in terms of capacity to take on a larger scope of program activities (staffing, management support, technological resources, partnerships, *etc.*).

6. Providing evidence of results based on proximal performance measures which are anticipated to lead to the achievement of the CDC, DDT's National Objectives.

Special Projects of National Significance

High performing Tier 2 programs will be eligible to request additional funding to support projects of national significance. Tier 2 DPCPs who are awarded funds to carry out these Special Projects have demonstrated multi-system integration of public health services and partnerships into a comprehensive, highly functioning, and accountable program. A number of key innovative strategies, implemented by these DPCPs, have been sustained or institutionalized, documented in public health reports or scientific literature and disseminated to other programs as appropriate. It is anticipated that Special Projects will be funded for a specified period of time and may include one or more of the following: (1) Spreading successful population-based interventions accomplished in earlier phases of the program to reach populations still unserved; (2) Conducting projects which provide national leadership in sharing and promoting processes and results. Helping CDC to influence national policies based on emerging needs and discovery of effective practices and policies; and (3) Developing and conducting research projects of national significance, which appropriately contribute to the emerging diabetes public health science base.

The performance expectations of the Special Projects will be specific to the nature of the Project, with the expectation that the Tier 2 programs that are conducting the Special Projects will:

1. Demonstrate quality activities linked to the Ten Essential Public Health Services with activities in each of the four indicators.

2. Demonstrate results in the implementation of improvement plans.

3. Meet the expectations of Tier 2.

4. Develop a work plan that meets criteria for Tier 2 programs and Special Projects with appropriate budget justification based on the nature of the Project.

5. Demonstrate readiness in terms of capacity to take on a larger scope of program activities required to implement Special Projects (staffing, management support, technological resources, partnerships, *etc.*).

6. Provide evidence of results based on proximal performance measures which are anticipated to lead to the

accomplishment of the CDC, DDT's National Objectives.

2. CDC Activities.

a. Provide ongoing guidance, training, consultation, and technical assistance in all aspects of diabetes prevention and control, as described under Recipient Activities.

b. Provide up-to-date information that describes proven interventions and current research in appropriate areas of diabetes prevention and control.

c. Provide resources, tools, and technical assistance to improve and enhance program evaluation efforts.

d. Provide resources and technical assistance to improve monitoring and surveillance systems. Provide technical assistance in the coordination of surveillance and other data systems to measure and characterize the burden of diabetes.

e. Collaborate with the DPCPs and other appropriate partners to develop and disseminate programmatic guidance and other resources for specific interventions, health communication campaigns, and other national initiatives.

f. Facilitate the adoption and adaptation of effective practices through workshops, trainings, conferences, and electronic and verbal communication among recipients of cooperative agreement awards under this program announcement, and other diabetes prevention and control partners.

g. Support the development and maintenance of a system for DPCP input into planning and sharing of information.

h. Assist in and support the development and maintenance of partnerships and networks with Federal and non-Federal, public and private sector organizations to help implement diabetes prevention and control programs, thereby maintaining a national infrastructure to complement the infrastructure in the states and territories and their local jurisdictions.

i. Facilitate effective communication and integration between NDEP and state DPCPs. This includes, but is not limited to, NDEP training, media, and other program products and tools.

j. Provide up-to-date information on the responsible conduct of research and technical assistance for program activities involving human subjects.

F. Content

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Recipient Activities, Evaluation Criteria, and Other Requirements sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The applications (excluding forms and attachments) should be no more than 50 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12 point font. Necessary supporting information (tables, organizational charts, position descriptions, *etc.*) may be provided as attachments. A signed original and two copies of the application must be mailed to the CDC Grants Office.

Applicants are strongly encouraged to utilize the MIS. The format of DDT's MIS complements the application content specified in this announcement. Therefore, to avoid duplication of effort, the application content may be entered into the DDT MIS. Hard copies will be generated from the MIS for formal submission to the CDC Procurement and Grants Office with the required signed forms. OMB clearance for the data collection initiated under this cooperative agreement has been approved. (OMB No. 0920–0479. Expiration date 7/31/2003.)

Applicants for comprehensive level funding must demonstrate optimal core capacity as evidenced by the following: Established surveillance systems; sound infrastructure and management (including fiscal management, performance management, program assessment, and strategic planning); proven experience with results in the implementation of well designed small-scale pilot projects; effective partnerships; and sound monitoring and evaluation of diabetes prevention and control activities including process and impact evaluation. In addition, Comprehensive Program applications must include a plan to develop public health activities that reach the entire State, or to implement an existing multifaceted intensive program in a limited geographical area within a defined target population.

Both Core and Comprehensive Program applicants should respond to items one through seven below. However, applicants should note that in some areas different information is requested of applicants. Current Core grantees applying for a Comprehensive award should provide two separate applications, one Core application and one Comprehensive application, and address the comprehensive component by describing their planned or proposed comprehensive activities.

1. Background and Need:

a. Provide an estimate of the burden of diabetes and its complications, and its geographic and demographic distribution within the State. Reference the data sources that support these estimates. Describe the challenges to diminishing the morbidity and mortality from diabetes in your State.

b. Include a description of the populations that are at high risk for diabetes in your State. If possible, describe the social, ecological, or economic conditions that contribute to the disproportionate burden of diabetes in the population, as well as knowledge, attitudes, and beliefs that impact the health practices of the population. If available, attach references for any studies or sources from which this information was obtained.

c. Provide an analysis of the barriers to addressing the burden of diabetes in the State.

2. Program Accomplishments and Proven Capacity:

a. Describe efforts to develop and incorporate diabetes surveillance systems, including BRFSS, in monitoring and tracking diabetes-related health status in the State. Include information on how data is used in diabetes program planning and decision making.

b. Describe unique or significant advances toward achieving program objectives and the CDC, DDT's National Objectives.

c. Provide findings, conclusions, or status of pilot projects and/or statewide activities. Where appropriate, provide success stories of program activities or other methods of determining success.

d. Provide examples of successful efforts to influence the widespread application of accepted standards, policies, and protocols. Describe the methodology for determining the success of these efforts.

e. Describe specific program activities and accomplishments in addressing the needs of underserved populations, or populations at high risk for diabetes in the State.

f. Describe how the DPCP engages partners, including their diabetes advisory groups or coalitions, other Chronic Disease Programs, and non-traditional partners, in program planning, implementation, coordinating efforts and evaluation in support of the DPCP work plan objectives.

g. Describe how the DPCP has managed its fiscal and human resources in the past five years (including history of unobligated balances, how match requirements have been met, turnover in key staff positions, professional development of DPCP staff, supportive leadership, *etc.*).

h. Provide letters of support that reflect the involvement of diverse (traditional and non-traditional) organizations in planning the response

to this program announcement. Include specific roles and responsibilities of the partner providing the letter in the State Diabetes Strategic Plan or activity/intervention that is pertinent.

i. If available, provide a state diabetes strategic plan, diabetes advisory group or coalition by-laws, action plans, and any other substantive work products from these partnerships that demonstrate quality and effectiveness.

3. Program Work Plan:

Provide a clear work plan that addresses the items listed below. Some objectives may reflect the process by which the program or activity is developed, while others will reflect the actual public health impact, output or outcome that results.

Each DPCP should state their measurable and time-phased objectives for the project period that will help achieve the goal(s) of the program. A ''logic model'' or causal relationship should be evident among the long term objectives, process objectives, and activities.

a. Provide measurable and time-phased long term objectives for the five-year project period that should mirror the following CDC, DDT's National Objectives:

(1). By 2008, DPCPs should have demonstrated success in achieving an increase in persons with diabetes who receive recommended foot exams, eye exams, flu and pneumococcal immunizations, and A1C tests.

(2). By 2008, DPCPs should have demonstrated progress in establishing linkages for the promotion of wellness and physical activity for persons with diabetes.

(3). By 2008, all DPCPs should have demonstrated progress in eliminating health disparities for high risk populations with respect to diabetes prevention and control.

(4). Each DPCP should establish measurement procedures and surveillance systems, including baseline and target measurements of the percent of persons with diabetes receiving recommended foot exams, eye exams, flu and pneumococcal immunizations and recommended A1C tests, as a means of assessing program success. b. Provide measurable, specific and time-phased one year budget period objectives that will help achieve the stated time-phased long term objectives. c. Describe in detail a plan for systems-based activities, and methods for achieving each of the proposed one year budget period objectives.

4. Evaluation Plan:

Describe how progress, the achievement of program objectives and the effectiveness of program activities will be monitored and evaluated. Describe how data will be collected, analyzed, and used to improve the program. Specify the person(s) responsible for designing and implementing evaluation activities, collecting and analyzing data, and reporting findings. DPCPs should incorporate the six steps of the ''CDC Framework for Program Evaluation'' when creating the DPCP evaluation plan. The six connected steps assist in the planning and evaluation of a variety of interventions. The CDC Evaluation Framework steps are:

Step 1: Engage stakeholders: Include individuals and organizations that are involved in program operations, served or affected by the program, and the primary users of evaluation.

Step 2: Describe the program: Descriptions should be sufficiently detailed to ensure understanding of program objectives and strategies. Include a logic model that links program objectives and activities to eventual outcomes/effects.

Step 3: Focus the evaluation design: Specify the questions to be answered through the evaluation activities proposed. These questions should guide the evaluation process and be directly linked to the objectives stated above. Specify the methods for quantitative and qualitative data collection, such as the use of questionnaires, surveys, other data collection instruments, interviews, and focus groups, *etc.* (Assure that appropriate Human Subjects Research procedures and OMB requirements have been followed and documented.)

Step 4: Gather credible evidence: Specify the information (data) that will be collected to answer the evaluation questions stated above. Specify the sources of information (data) to be collected. Since this evaluation is designed to measure change as a result of the intervention, specify the baseline against which the change is being measured.

Step 5: Justify conclusions: Specify the process to be used to analyze, synthesize, and report the data.

Step 6: Ensure use and share lessons learned: Explain how the data resulting from the evaluation will be used to improve or expand the program. Discuss how the results of the evaluation will be reported and who will receive the results.

More information about the six steps can be found at: *http://www.cdc.gov/eval/framework.htm.*

Note: Include samples of data collection tools in the attachments, if available.

In addition, the evaluation plan should document and describe program successes, unmet needs, barriers, and problems encountered in planning, implementing, or in coordinating activities.

5. Program Infrastructure and Management Plan: Describe how the program will be effectively managed including:

a. Staffing: Minimal key staffing for the program should include a full-time DPCP coordinator, a designated evaluation lead, and a designated epidemiology/surveillance lead.

b. Staffing Responsibilities: Responsibilities of key staff should include: a DPCP coordinator responsible for the overall program operation and coordination; a designated evaluation lead responsible for ensuring that the program and its projects are evaluated regularly for process and impact measures and that results are appropriately disseminated; and a designated epidemiology/surveillance lead who will ensure the integrity of surveillance systems and other DPCP epidemiological activities and facilitate intra and inter health department exchange of epidemiological information. In addition, the DPCP should designate a staff member to facilitate and oversee a process for integrating other program components such as NDEP messages and tools into program planning and implementation activities.

c. Management Plan and Organization Operations: Provide a copy of the organizational chart that indicates the placement of the proposed program. A description of clear and direct lines of authority within the program staff and to the next two higher levels of supervisory authority should be provided. Fiscal controls and their relationship to program staff and management should be included. Discuss strategies for ensuring timely and appropriate communication among staff on the status of program implementation and related issues. The DPCP should receive guidance and support from the State Chronic Disease Director or the equivalent. The priority DPCP goals and objectives should be part of, or incorporated in, the overall State Health Department strategic plan.

d. Qualifications: Describe the qualifications of the designated or proposed staff. Provide abbreviated (one-to-two page) resumes and brief job descriptions for designated staff, and brief job descriptions for the proposed staff.

e. Responsibility: Identify key staff positions responsible for the implementation of each program activity, especially the required full

time coordinator, the evaluation lead and the epidemiology/surveillance lead.

f. Contingency plans: Describe plans for ongoing management and operation of the project if there are unexpected vacancies, hiring restrictions, or difficulty recruiting in key positions.

6. Financial Participation: Matching funds are required from non-Federal sources in the amount of not less than $1 for each $5 of Federal funds awarded to Core Programs under this program announcement. Comprehensive Programs are required to match $1 for each $4 of Federal funds awarded under this announcement. Match requirements may change in years two through five. The applicant should identify and describe:

a. Sources of allowable matching funds for the program and the estimated amounts from each.

b. Procedures for documenting and tracking the receipt and value of noncash matching funds.

7. Budget and Narrative Justification:

a. Financial Assistance

Provide a detailed line-item budget and narrative justification for all operating expenses consistent with and clearly related to the proposed objectives and planned activities. Be precise about the program purpose of each budget item and itemize calculations when appropriate.

Applicants are required to attend the DDT Annual Conference and the DPCP Project Directors' Meeting and should budget appropriately. DPCPs are also encouraged to attend and participate in non-conference training such as Diabetes Today and the Diabetes Collaborative, as appropriate. Other travel which may be of relevance to the DPCP goals and activities include the annual meetings of the following organizations: National Diabetes Education Program Partnership Network, ASTCDD (Chronic Disease Conference), American Diabetes Association (ADA), American Association for Diabetes Educators (AADE), National Association of Community Health Centers (NACHC), American Association of Health Plans (AAHP) and American Public Health Association (APHA). Travel budget should support other recipient activities as considered necessary.

b. Direct Assistance

To request a Federal assignee, applicants must provide the following information:

1). Number of assignees requested

2). Description of the position and proposed duties

3). Ability or inability to hire locally with financial assistance

4). Justification for request

5). Organizational chart and name of intended point of contact to assignee

6). Opportunities for training, education, and work experiences for assignees

7). Description of assignees' access to computer equipment for communication with CDC (*e.g.*, personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

G. Application Submission and Deadline

Application Forms

Submit the signed original and two copies of CDC Form 0.1246(E). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm* If you do not have access to the internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

Applications must be received by 4 p.m. Eastern Time January 9, 2003. Submit the application to: Technical Information Management—PA#03017, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section ''B. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

An Objective Review Panel appointed by CDC will evaluate the scientific and technical merit of Comprehensive Program applications and their responsiveness to the information requested in the ''Application Content'' sections above. Core Program applications will receive a technical review for acceptability. Each application will be reviewed and evaluated against the following criteria:

Core Program Evaluation Criteria (100 Points Total)

1. Program Work Plan (75 points Total)

The extent to which the work plan addresses the following information:

a. Long Term and Process Objectives (10 points)

Measurable, specific, time-phased five-year project period long term objectives, and measurable, time-phased one-year budget period process objectives that will help achieve the goals and objectives of the program. The applicant used the State's latest data as baseline.

b. Program Work Plan Methodology (25 points)

The Program Work plan provides a detailed description of system-based activities and methods for achieving each of the proposed one year budget period objectives that appears reasonable and likely to be successful.

c. Evaluation Plan (20 points)

The plan for evaluating progress, the effectiveness of activities and attainment of each of the proposed objectives, to include a clear description of the evaluation methodology and frequency of reporting, appears adequate. The six steps of the CDC Framework for Program Evaluations are used as a framework for the plan. (*See* section E. 4. Evaluation Plan under Application Content section). Logic

models that link program objectives and activities to eventual outcomes/effects should be included.

d. Program Infrastructure and Management Plan (20 points)

DPCP staffing pattern adequately supports the work plan proposed to include the number and type of staff and their qualifications and experience. The Management Plan describes a methodology for effective management, to include a sound management structure, *i.e.* a full time DPCP coordinator and designated evaluation and epidemiology/surveillance leads; clear and direct lines of authority, supervisory and fiscal controls; contingency plans for ongoing management in case of unexpected staff disruption shall be included. Include a copy of the organizational chart that indicates the placement of the DPCP, resumes for designated staff, and job descriptions for the proposed staff. Strategies for ensuring timely and appropriate communication among staff on the status of program implementation and related issues are included in the plan. Describe how the DPCP and its partners will collaborate to collectively complete a diabetes specific assessment based on the ten essential public health services. The results of the assessment will assist in identifying specific areas of strength and areas for improvement in developing an optimal public health diabetes program in subsequent years.

2. Accomplishments and Proven Capacity of the Core Program (15 points)

Core program accomplishments and activities that make it appear likely that the applicant will successfully carry out proposed activities, to include:

a. Existing state-based diabetes surveillance system, including annual administration of the Diabetes Module of the BRFSS.

b. Advances toward achieving the CDC, DDT's National Objectives (provide data as evidence of progress).

c. Findings, conclusions, or status of pilot projects in health systems, health communications, and community interventions.

d. Examples of successful efforts to influence the widespread application of accepted standards, policies, and protocols, which support diabetes prevention and control.

e. Accomplishments of any diabetes advisory groups or coalitions in providing guidance to the DPCP in program planning, implementation, coordinating efforts and evaluation (may include a copy of the by-laws).

f. Activities and accomplishments in addressing the needs of underserved populations and/or populations with a disparate burden of diabetes and its related complications are included.

g. DPCP's management of its fiscal and human resources in the past five years (including history of unobligated balances, how match requirements have been met, turnover in key staff positions, professional development of DPCP staff, supportive leadership, *etc.*) are addressed.

3. Background and Need (10 points)

The extent to which the DPCP demonstrates the need for support. Narrative should include:

a. Estimated prevalence of diabetes and its complications, and its geographic and demographic distribution within the State.

b. Description of the high risk populations, including racial/ethnic minorities, the elderly, and the indigent/disenfranchised population. Description of the characteristics of the targeted population relative to the social, ecological, or economic conditions that contribute to the disproportionate burden of diabetes in the population, as well as their knowledge, attitudes, beliefs, and health practices relative to diabetes.

c. Analysis of the findings of (b) above in relation to known or anticipated barriers to diabetes education, self management, preventive community services and health care.

4. Budget and Justification (Reviewed but Not Scored)

The extent to which the line item budget justification is reasonable and consistent with the purpose and program goal(s) and objectives of the cooperative agreement. This includes both requests for financial assistance and how the DPCP proposes to meet the match requirement.

5. If any resources available under this program announcement will be used to conduct research projects involving human subjects, the application must adequately address Title 45 CFR Part 46. (Reviewed but Not Scored, however an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

6. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (Reviewed but Not Scored)

Comprehensive Program Evaluation Criteria (100 points total)

1. Program Work Plan (60 points total)

The Program Work plan provides a detailed description of system-based activities and methods for achieving each of the proposed objectives that appears reasonable and likely to be successful.

a. Long Term and Process Objectives (10 points) Measurable, specific, time-phased five-year project period long term objectives, and measurable, specific, time-phased one year budget period process objectives, that will help achieve the time-phased long term objectives of the program, are provided. The DPCP used the state's latest data as baseline.

b. Program Work Plan Methodology (20 points) The Work Plan provides a detailed description of systems-based activities and methods for achieving each of the proposed one year budget period objectives that appears reasonable and likely to be successful. Existing comprehensive activities are described, including plans for maintaining or modifying them. New Comprehensive program activities are adequately described and justified.

c. Evaluation Plan (15 points) The plan for evaluating progress, the effectiveness of activities and attainment of each of the proposed objectives, to include a clear description of the evaluation methodology and frequency of reporting, appears adequate. The plan should incorporate the six steps of the CDC Framework for Program Evaluation. (*See* section E. 4. Evaluation Plan under Application Content section). Logic models that link program objectives and activities to eventual outcomes/effects should be included.

d. Program Infrastructure and Management Plan (15 points)

DPCP staffing pattern adequately supports the work plan proposed to include the number and type of staff and their qualifications and experience. The Management Plan describes a methodology for effective management,

to include a sound management structure, *i.e.* a full time DPCP coordinator and designated evaluation and epidemiology/surveillance leads; clear and direct lines of authority, supervisory and fiscal controls; contingency plans for ongoing management in case of unexpected staff disruption shall be included. A copy of the organizational chart that indicates the placement of the DPCP, resumes for designated staff and job descriptions for the proposed staff. Strategies for ensuring timely and appropriate communication among staff on the status of program implementation and related issues are included in the plan. The management plan should demonstrate how the DPCP will address increased program responsibility and fiscal and human resources. Describe how the DPCP and its partners will collaborate to collectively complete a diabetes specific assessment based on the ten essential public health services. The results of the assessment will assist in identifying specific areas of strength and areas for improvement in developing an optimal public health diabetes program in subsequent years.

2. Program Accomplishments and Proven Capacity To Serve as a Comprehensive Program (35 points)

Program accomplishments and activities that make it appear likely that the applicant will successfully carry out proposed comprehensive activities to include:

a. Advanced and enhanced state-based diabetes surveillance system, minimally including annual administration of the diabetes module of the BRFSS.

b. Status and impact of statewide and other comprehensive program activities in health systems, health communications, and community interventions that have advanced the program toward achieving improvements in the CDC, DDT's National Objectives. Data should be provided to support program impact and as evidence of progress.

c. Description of evaluation activities and examples of efforts to disseminate program activities and lessons learned to the broader diabetes community.

d. Evidence of internal and external policy changes resulting from comprehensive program efforts, including accomplishments of any diabetes advisory groups or coalitions (may include a copy of the by-laws).

e. Examples of successful efforts to influence the widespread application of accepted standards, policies, and protocols which support diabetes prevention and control.

f. Accomplishments in addressing the needs of underserved populations and/or reducing health disparities in populations with a disparate burden of diabetes and its related complications.

g. DPCP's management of its fiscal and human resources in the past five years (including history of unobligated balances, how match requirements have been met, turnover in key staff positions, professional development of DPCP staff, supportive leadership, *etc.*) are addressed.

3. Background and Need (5 points)

The extent to which the DPCP demonstrates the need for support. Narrative should include:

a. Estimated prevalence of diabetes and its complications, and its geographic and demographic distribution within the State.

b. Description of the high risk populations, including racial/ethnic minorities, the elderly, and the indigent/disenfranchised population. Description of the characteristics of the targeted population relative to the social, ecological, or economic conditions that contribute to the disproportionate burden of diabetes in the population, as well as their knowledge, attitudes, beliefs, and health practices relative to diabetes.

c. Analysis of the findings of b. above in relation to known, or anticipated, barriers to diabetes education, self management, preventive community services and health care.

4. Budget and Justification (reviewed but not scored)

The extent to which the line-item budget justification is reasonable and consistent with the purpose and program goals and objectives of the cooperative agreement. This includes both requests for financial assistance and how the DPCP proposes to meet the match requirement.

5. If any resources available under this program announcement will be used to conduct research projects involving human subjects, the application must adequately address title 45 CFR part 46. (Reviewed but Not Scored, however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

6. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (Reviewed but Not Scored)

I. Other Requirements

Technical Reporting Requirements

Provide CDC with a signed original and two copies of:

1. Interim progress reports, no less than 90 days before the end of the budget periods. The format of the Division of Diabetes Translation's (DDT) Management Information System (MIS) is aligned with the interim progress report content. Therefore, to avoid duplication of effort, the interim progress report content may be entered into the DDT MIS and hard copies generated from MIS for formal submission to the CDC Procurement and Grants Office. The content of the interim progress report must be entered into the DDT MIS, by the grantee, within one month of the due date of the interim progress report. The interim progress report will serve as your non-competing continuation application, and must contain the following broad elements (subject to change as the program evolves): progress and performance for the first eight months of the current budget period objectives/activities, the proposed objectives/activities for the new year's budget period related to Surveillance, Work Plan, Program Coordination, Program Infrastructure, and Financial information (including a detailed line-item budget and justification). Progress in implementing improvement plans starting in year two, must be reported as part of the required interim progress reports.

2. Financial status report, no more than 90 days after the end of each budget period.

3. Final financial and performance reports no more than 90 days after the end of the five year project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this announcement as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–2 Requirement for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone (770) 488–2700.

For business management and budget assistance in the States, contact: Angela Webb, Grants Management Specialist, Acquisition and Assistance Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone (770) 488–2784. Email address: *AQW6@cdc.gov.*

For business management and budget assistance in the Territories, contact: Terri Brown, Grants Management Specialist, International & Territories Acquisition and Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146. Telephone (770) 488–2638. Email address: *aie9@cdc.gov.*

For program technical assistance, contact: Patricia L. Mitchell, MPH, Health Comm. Section Chief, Program Development Branch, DDT, NCCDPHP, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, MS K10, Atlanta, GA 30341–3717. Telephone (770) 488–5634. Email address: *plm3@cdc.gov.*

Dated: November 12, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–29837 Filed 11–22–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–5556]

Agency Information Collection Activities; Announcement of OMB Approval; Food Contact Substances Notification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Contact Substances Notification System'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 2002 (67 FR 35724), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0495. The approval expires on November 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: November 14, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–29807 Filed 11–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 13, 14, and 15, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, e-mail: *somersk@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 13, 2003, the committee will discuss the safety and efficacy of biologic licensing application BL 103979, FABRAZYME (agalsidase beta, Genzyme Corp.) for the treatment of Fabry's disease. On January 14, 2003, the committee will discuss the safety and efficacy of biologic licensing application BL 103977, REPLAGAL (agalsidase alfa, Transkaryotic Therapies, Inc.) for the treatment of Fabry's disease. On January 15, 2003, the committee will discuss the safety and efficacy of biologic licensing application BL 125058, ALDURAZYME (laronidase, BioMarin Pharmaceutical, Inc.) for the treatment of mucopolysaccharidosis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 6, 2003. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 6, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen M. Templeton-Somers at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 15, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–29808 Filed 11–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indian Women's Health Demonstration Program for American Indians and Alaska Natives

AGENCY: Indian Health Service, HHS.

ACTION: Extension of deadlines for competitive applications for the Indian Women's Health Demonstration Program for American Indians and Alaska Natives.

The Notice of funding availability for competitive grants for Indian Women's Health Demonstration Program for American Indians and Alaska Natives was published at 67 FR 66410 on October 31, 2002.

The Indian Health Service announces the extension of dates for the following:

1. *Application Receipt Date:* January 3, 2003.

2. *Application Review:* January 23–24, 2003.

3. *Applicants Notified of Results (approved, approved unfunded, or disapproved)*: February 13, 2003.

4. *Anticipated Start of Grant Cycle:* March 1, 2003.

Applicants are notified in writing on or about February 13, 2003.

This extension provides applicants approximately four additional weeks to prepare and submit competitive applications.

All other information contained in **Federal Register** announcement remains unchanged.

Dated: November 18, 2002.

Charles W. Grimm,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 02–29865 Filed 11–22–02; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Director, National Institutes of Health; 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 a meeting of the Advisory Committee to the Director, National Institutes of Health (NIH).

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.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: Advisory Committee to the Director, NIH.

Date: December 5, 2002.

Open: 8 a.m. to 12 p.m.

Agenda: Among the topics proposed for discussion are: (1) Current issues (2) advice on priority areas for the NIH Director and (3) a summary of future action items and follow up items.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: Review and evaluate confidential budgetary items.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892.

Contact Person: Ruth L. Kirschstein, M.D., Deputy Director, NIH, National Institutes of Health, 1 Center Drive MSC 0148, Building 1, Room 126, Bethesda, MD 20892–0148, 301–496–2433, *rk25n@nih.gov.*

Any 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 home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29840 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, December 4, 2002, 8:45 a.m. to December 5, 2002, 12 p.m., which was published in the **Federal Register** on November 8, 2002, 67 FR 68148.

The meeting time has been changed to start at 8:30 a.m. on Wednesday, December 4, 2002. The Subcommittee on Planning and Budget meeting which was scheduled on Wednesday, December 4, 2002 has been cancelled. The meeting is partially closed to the public.

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29842 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Cooperative Clinical Trial for Pediatric Transplantation.

Date: December 17, 2002.
Time: 9 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Priti Mehrotra, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, 301–435–9369, *pm158b@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29841 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, November 17, 2002, 7:30 p.m. to November 20, 2002, 5 p.m., which was published in the **Federal Register** on September 27, 2002, 67 FR 61144.

The meeting will be held on January 15–17, 2003 beginning at 8 a.m., instead of on November 17, 2002, as previously advertised. The meeting is closed to the public.

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29843 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel. Support Contract for the NTP Interagency Center for Evaluation of Alternative. Toxicological Methods (RFP NIH–ES–02–08).
Date: December 13, 2002.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).
Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29844 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Innate Immunity in Vertebrates and Insects.
Date: December 12, 2002.
Time: 1:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: 6700–B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–496–2550. *gm145a@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.
Date: December 13, 2002.
Time: 11 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health 6700B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, Bethesda, MD 20892–7616. 301–496–2550. *gm145a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29845 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Arming the Immune System Against Pathogens.

Date: December 17, 2002.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Nancy B. Saunders, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. (301) 496–2550. *ns120v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29846 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immunopathogenesis of Acute HIV–1 Infection.

Date: December 6, 2002.

Time: 10 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Room 1205, Bethesda, MD 20892. (Telephone Conference Call.).

Contact Person: Vassill St. Georgiev, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 10892–7610, 301–496–2250.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 15, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–29847 Filed 11–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Correction of Meeting Notice

Public notice was given in the **Federal Register** on October 21, 2002, Volume 67, Number 203, page 64655–64656, that the Substance Abuse and Mental Health Services Administration (SAMHSA) Special Emphasis Panels I meetings, Recovery Community Services Program and Strengthening Communities/Youth on November 18th–22nd, 2002, would be closed from 11 a.m. November 20th to Adjournment. The notice should have read these meetings will be closed in their entirety from 8:30 a.m. on November 18th, 2002, to Adjournment on November 22nd, 2002. Notice was given that SAMHSA Special Emphasis Panels I, Center for Mental Health Services Jail Diversion meetings on December 2nd–6th, 2002, would be closed from 11 a.m. December 4th to Adjournment. The closed session is now from 8:30 a.m. on December 2nd to Adjournment on December 6th, 2002.

Notice was given that SAMHSA Special Emphasis Panels I, Center for Substance Abuse Treatment, American Indian/Alaskan Native and Rural Community Planning Program meeting on December 9th–13th, 2002, would be closed from 11 a.m. December 11th to adjournment. The closed session is now from 8:30 a.m. on December 9th to Adjournment on December 13th, 2002.

Coral Sweeney,

Review Specialist, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–29809 Filed 11–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–70]

Notice of Submission of Proposed Information Collection to OMB: Application Submission Requirements—Section 811 Supportive Housing for Persons With Disabilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 26, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0462) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202)395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to

collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar wiht the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application Submission Requirements—Section 811 Supportive Housing for Persons with Disabilities.

OMB Approval Number: 2502–0462.

Form Numbers: HUD–92016–CA, SF 424, HUD 50070, HUD 50071, SF LLL, HUD 2880, HUD 2992, HUD 2991, HUD 92041, HUD 92043.

Description of the Need for the Information and its Proposed Use: To apply for capital advances for HUD's Section 811 program, prospective private nonprofit organizations submit completed Section 811 Supportive Housing for Persons with Disabilities Application Kits.

Respondents: Not-for profit institutions, Business or other for-profit, State, Local or Tribal Governments.

Frequency of Submission: On occasion.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	260		1		40.3		10,481

Total Estimated Burden Hours: 10,481.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 19, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–29801 Filed 11–22–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–03]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2002–2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale (MHLS 2002–2). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder Information Package (BIP) was available to qualified bidders on October 31, 2002. Bids for the loans must be submitted on the bid date that currently is scheduled for December 5, 2002. HUD anticipates that awards will be made on or before December 9, 2002. Closings are scheduled to take place between December 9, 2002 and December 20, 2002.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement that are acceptable to HUD. Both documents are available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/mfam/mhls.cfm*. The executed documents must be mailed and faxed to Cushman & Wakefield at 1801 K Street, NW., Suite 100–L, Washington, DC 20006, Attention: MHLS 2002–2 Sale Coordinator, Fax: (202) 293–9049.

The MHLS 2002–2 due diligence facility is located at 1500 K Street, NW., Suite 625, Washington, DC 20005. The facility will be open from October 28, 2002 through December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Myrna Gordon, Deputy Director, Asset Sales Office, Room 6266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2625, extension 3369 or Erin E. Moore, Legal Honors Intern, Office of Insured Housing, Multifamily Division, Room 9230; telephone (202) 708–0614, extension 5763. These are not toll-free numbers. Hearing or speech-impaired individuals may call (800) 877–8339 (TTY).

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2002–2 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised of performing and nonperforming mortgage loans. A listing of the Mortgage Loans is included in the BIP. The Mortgage Loans will be sold without FHA insurance and, except for one Mortgage Loan, with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans have been stratified for bidding purposes into 7 mortgage loan pools. Each pool contains Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan.

The Bidding Process

The BIP describes in detail the procedure for bidding in MHLS 2002–2. The BIP will also include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan. As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. HUD anticipates that the awards will be made on or before December 9, 2002 (Award Date). Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur between December 9, 2002 and December 20, 2002. These are the essential terms of sale. The Loan Sale Agreement, which is included in the BIP, contains additional terms and details. To ensure a competitive bidding process, the terms of the bidding

process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence Facility

From October 28, 2002 through December 4, 2002, the due diligence facility for MHLS 2002–2 will be open at 1500 K Street, NW., Suite 625, Washington, DC. Qualified bidders will be able to access loan information at the due diligence facility through computer workstations connected to the due diligence system or remotely via a high speed Internet connection. Qualified bidders may make appointments to visit the facility or obtain user IDs and passwords for remote access by contacting Owusu & Company, HUD's due diligence contractor, at (202) 638–8390.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2002–2 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This notice is to ensure compliance with the Multifamily Mortgage Sale Regulations, 24 CFR 290.30. These regulations were promulgated in consideration of the settlement that HUD entered into in *Walker* v. *Kemp*, No. C 87 2628 RFP (N.D. Cal.). In settling that matter, HUD agreed that prior to the sale of specific HUD held mortgage loans that may have been receiving some form of subsidy at that time, HUD would consider the effects of the sale upon several issues. These issues include, but are not limited to, the availability of assisted housing for tenants in those projects, the legal protections afforded to those tenants and their rights, HUD's ability to monitor compliance of the properties and the community need for low and moderate income housing. By following the Multifamily Mortgage Sale Regulations, HUD is in compliance with the terms of the settlement.

This is a sale of unsubsidized mortgage loans. Therefore, HUD has determined that, pursuant to the Multifamily Mortgage Sale Regulations, the Mortgage Loans will be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD is unaware of any Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which very-low income tenants reside who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. These regulations require that, except under certain limited circumstances, HUD-held multifamily mortgage loans must be sold on a competitive basis (24 CFR 290.30). This method of sale optimizes HUD's return on the sale of the Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2002–2:

(1) Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, part 24;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf, of HUD in connection with MHLS 2002–2;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2002–2;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2002–2;

(7) Any mortgagor that failed to submit to HUD the 1999, 2000 and 2001 audited financial statements for a project securing a Mortgage Loan on or before November 8, 2002; and

(8) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) that is a mortgagor in any of HUD's multifamily housing programs that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation was cured on or before November 15, 2002.

In addition, any entity or individual that served as a loan servicer or performed other services for or on behalf of HUD at any time during the 2-year period prior to October 1, 2002 with respect to any Mortgage Loan is ineligible to bid on such Mortgage Loan. Also ineligible to bid on any Mortgage Loan are: (a) Any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan. Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2002–2.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2002–2, including, but not limited to, the identity of any bidder and their bid price or bid percentage, upon the completion of the sale. Even if HUD elects not to publicly disclose any information relating to MHLS 2002–2, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2002–2, and does not establish HUD's policy for the sale of other mortgage loans.

Dated: November 18, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–29800 Filed 11–22–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–02–5101–ER–F331; N–75493, N–75471, N–75472, N–75474, N–75475, N–75476, N–75477]

Notice of Availability to Announce the 60-Day Public Review and Comment Period for the Draft Environmental Impact Statement for the Ivanpah Energy Center

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability (NOA) to announce the 60-day public review period for the Ivanpah Energy Center (Ivanpah) Draft Environmental Impact Statement (DEIS).

SUMMARY: Pursuant to Section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, a DEIS has been prepared by the Bureau of Land Management (BLM), Las Vegas Field Office for the Ivanpah Energy Center. The DEIS was prepared to analyze the impacts of issuing rights-of-way for a gas-fired electric power plant and ancillary facilities (consisting of electric transmission lines, electric substations, water pipeline, access road, and telephone line). Western Area Power Administration is a cooperating agency.

ADDRESSES: Written comments on the DEIS must be postmarked or otherwise delivered by 4:30 p.m., 60 days following the date the Environmental Protection Agency (EPA) publishes the NOA and filing of the DEIS in the **Federal Register**. Written comments on the document should be addressed to Jerry Crockford, Project Manager, Bureau of Land Management, Las Vegas Field Office, 4701 Torrey Pines Drive, Las Vegas, NV 89130–2301. Oral and/or written comments may also be presented at public meetings. Public reading copies of the DEIS will be available for reading at public libraries located at the following addresses:

- 650 West Quartz Avenue, Sandy Valley, NV
- 365 West San Pedro, Goodsprings, NV
- 4280 South Jones Blvd., Las Vegas, NV

A limited number of copies of the document will be available at the following BLM offices:

- X BLM, Nevada State Office, 1340 Financial Blvd., Reno, NV
- X BLM, Las Vegas Field Office, 4701 Torrey Pines Drive, Las Vegas, NV

DATES: Three scheduled public meetings commencing at 7 p.m. and continuing until all those present have an opportunity to speak but closing no later than 9 p.m. will be held at the following dates and locations:

Tuesday, December 10, 2002—BLM, Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada

Wednesday, December 11, 2002—Community Center, West Quartz Avenue, Sandy Valley, Nevada

Thursday, December 12, 2002—Community Center, 375 West San Pedro Avenue, Goodsprings, Nevada

Individuals making written comments at public meetings may request confidentiality. If they wish to withhold their name or street address from public review or disclosure under the Freedom of Information Act, this must be definitively stated at the beginning of written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and for individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirety.

Copies of the DEIS will be mailed to individuals, agencies, or companies who previously requested copies.

FOR FURTHER INFORMATION CONTACT: Jerry Crockford, Project Manager, Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301 or Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401; telephone (505) 599–6333, cellular telephone (505) 486–4255.

SUPPLEMENTARY INFORMATION: The DEIS addresses the proposed action and two alternatives. The proposed action can be summarized as follows: constructing, operating, and maintaining a 500 megawatt gas-turbine combined-cycle power plant in the Ivanpah Valley, approximately 20 miles south of Las Vegas, Nevada. Except for a related electric transmission line, the proposed generating facility and most ancillary facilities are located on 30-acres of public land administered by the BLM, in the MDBM, T. 25 S., R. 58 E., sec. 1, and T. 25 S., R. 59 E., sec. 6. The facility would use a refrigerated air system to reduce cooling water requirements normally associated with combined-cycle power plants. Power generated from Ivanpah would enter the southern Nevada power grid through Western Area Power Administration's Mead Substation, in Eldorado Valley. The proposed plant site is located 2.5-miles southeast of the town of Goodsprings, Nevada. The proposed action includes the following ancillary facilities: a 12-inch diameter gas pipeline interconnection to the adjacent Kern River Gas Transmission gas pipeline; a four-inch diameter water pipeline originating from the Southern Nevada Correctional Center (SNCC) in Jean, Nevada, to supply water processed through a planned water treatment facility for air emissions control; a telecommunications line; a 230 kilovolt (kV) substation; the following 230 kV transmission lines: (1) Two 230 kV lines from the proposed Ivanpah Substation to the Pahrump-Mead 230 kV line corridor; (2) a 43-mile 230 kV line from the Ivanpah Substation to the Western Area Power Administration Mead Substation, in Eldorado Valley, Nevada; and (3) two 230 kV lines from the Ivanpah Substation to the Table Mountain Substation and Valley Electric Association's Pahrump-Mead Transmission Line; and the following fiber optic lines: (1) An optical-fiber ground wire (OPGW) shield wire as an integral part of the Ivanpah-Mead #2 transmission line; and (2) an OPGW as an integral part of the Table Mountain-Ivanpah #1 transmission line. Access to Ivanpah would be via an existing, unimproved road connected to State Highway 161.

An alternative plant site, located in Primm, Nevada, would be co-located with the Reliant Bighorn Power Plant, on a 30-acre parcel on private property. Ancillary facilities to the alternative plant site include a 10 to 11-mile long water supply pipeline from SNCC to the power plant; a 40-mile long transmission line to interconnect the plant to the Mead Substation; approximately 30-miles of transmission lines to interconnect the facility to the proposed Table Mountain Substation and the Valley Electric Association's Pahrump-Mead transmission line; a 3.2-mile natural gas pipeline connecting to Kern River Gas Transmission Company natural gas pipeline; use of existing access roads; and telecommunications facilities.

The plant will require approximately 22 months for construction. The plant will be built to operate continuously, except for semi-annual maintenance shutdowns, with a projected 40-year life. Power will be sold into the commercial power markets of Nevada, California, and Arizona.

Under the No Action Alternative, BLM would not issue right-of-way grants for Ivanpah and ancillary facilities. The project including the power plant, transmission lines, water pipeline, gas pipeline, access road, telecommunication facilities, and temporary use areas would not be constructed. The areas proposed for Ivanpah would remain undeveloped. An

energy need would not be met by the proposed plant's generated power. Public participation is encouraged throughout processing of this project. Comments presented throughout the process will be considered.

Dated: August 15, 2002.

Angie C. Lara,

Acting Field Manager.

[FR Doc. 02–29866 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–086–1430–ES]

Notice of Termination of Recreation and Public Purposes Act Classification and Opening Order; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of Recreation and Public Purposes Act Classification and opening order; Idaho.

SUMMARY: This notice terminates a portion of a Recreation and Public Purposes Act Classification on 40.55 acres, as this classification is no longer needed.

EFFECTIVE DATE: November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Scott Forssell, BLM Coeur d'Alene Field Office, 1808 N. Third St., Coeur d'Alene, ID, 83814 or call (208) 769–5044.

SUPPLEMENTARY INFORMATION: On April 7, 1978, 57.15 acres were classified as suitable for entry under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869). The legal description of this parcel is: Lots 3–5, section 10, T.48N., R.3E., Boise Meridian, Idaho. The classification and segregation for lot 5, section 10, T.48N., R.3E., Boise Meridian, Idaho, remains unaffected by this notice.

Both the classification and the segregation for the following described 40.55 acres is hereby terminated: lots 3 and 4, section 10, T.48N., R.3E., Boise Meridian, Idaho.

A local non-profit organization holds a Recreation and Public Purposes Act lease on public land. They have relinquished a portion of that lease. Federal regulations require that the classification on the lands formerly leased be terminated and that the lands be once again opened to the public land laws.

These lands will be opened to operation of the public land laws generally, including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record and the requirements of applicable law upon publication of this notice in the **Federal Register**.

Dated: October 8, 2002.

Jenifer Arnold,

Acting District Manager.

[FR Doc. 02–29823 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–35639]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Conveyance of Public Lands near Beatty, NV

AGENCY: Bureau of Land Management.

ACTION: Classification of public land for conveyance pursuant to the Recreation and Public Purposes Act.

SUMMARY: The following described public land in Nye County, Nevada has been examined and classified as suitable for conveyance, in accordance with Section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910. Patent will be issued to Nye County under provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*) for the purposes of operating a municipal solid waste transfer station.

Mount Diablo Meridian, Nevada

T. 12 S., R. 46 E.,
sec 13, S½NW¼NW¼, N½SW¼NW¼.
Containing 40.00 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with BLM land use planning and would be in the public interest. 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, pursuant to the 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 regulations to be established by the Secretary of the Interior.

Patent will contain the following provisions:

1. Nye County a political subdivision of the State of Nevada, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of actions, expense, and liability (hereinafter referred to in this clause as claims), resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentees employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 12 S., R. 46 E., sec. 13, S½NW¼NW¼NW¼, N½SW¼NW¼NW¼, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure or negligence of the United States;

2. The above described land was used as a solid waste disposal site, and will continue to be used as solid waste transfer station. Upon closure, the site may contain small quantities of commercial and household wastes as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner of final cover of the site unless excavation is conducted subject to applicable State and Federal requirements;

3. No portion of the land shall under any circumstances revert to the United States if any portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, storage, or release of any hazardous substance; and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada. The subject lands were previously classified and segregated for the purposes of a lease authorizing a sanitary landfill pursuant to the Recreation and Public Purposes Act. Further segregation will not be required.

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 conveyance or classification of

the lands to the Assistant Field Station Manager, Tonopah Field Station, P.O. Box 911, Tonopah, NV, 89049.

Classification Comments: Interested parties may submit comments involving the suitability of the land for use as a municipal solid waste transfer station. Comments on the classification are restricted to whether the land is physically suited for the proposal, 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 not directly related to the suitability of the land for the uses described.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication of this Notice in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: October 3, 2002.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 02–29824 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N 061122]

Notice of Realty Action; Termination of Recreation and Public Purposes Act Classification; Lyon County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purposes (R&PP) Classification N 061122 in its entirety. The land will be opened to the public land laws, including the mining laws.

EFFECTIVE DATE: The land will be open to entry effective 10 a.m. on December 26, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701, 775–885–6000.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, R&PP Classification N 061122 is hereby terminated in its entirety on the following described public land:

Mount Diablo Meridian, Nevada

T. 13 N., R. 25 E.,
Sec. 25, S½NW¼NE¼, SW¼NE¼.
Containing 60.00 acres, more or less.

Classification N 061122 made pursuant to the Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws. The land was previously leased to Lyon County for a sanitary landfill. The lease has terminated and the classification no longer serves any purpose.

At 10 a.m. on December 26, 2002, the land will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 26, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on December 26, 2002, the land will also be open to location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: October 21, 2002.

Charles P. Pope,

Assistant Manager, Non-Renewable Resources, Carson City Field Office.

[FR Doc. 02–29825 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1420–ES; N–74685]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: The following described public land in the Las Vegas Valley, Clark County, Nevada, 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 eq.). Clark County proposes to use the land for a multi-use service center.

Mount Diablo Meridian, Nevada,

T. 22 S., R. 60 E.,
Section 26: SW¼NE¼, N½SE¼NE¼, SW¼SE¼NE¼, N½SE¼SE¼NE¼, SW¼SE¼SE¼NE¼.
Approximately 77.5 acres.

The service center would be located in the southern end of the Las Vegas Valley, west of Jones Blvd., east of Torrey Pines Drive, south of Le Baron Ave., and north of Pyle Ave. The location is adjacent to an industrial area on the north and immediately east of the Union Pacific Railroad tracks. 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 each will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and 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. All valid and existing rights, which are identified and shown in the case file.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (P.L. 105–263).

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) 515–5164. 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 Purposed 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 lands 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 a Clark County service center. 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 not directly related to the suitability of the lands for a multi-use service center. 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 lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: October 16, 2002.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 02–29826 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ET, CARI 04221 01]

Notice of Proposed Modification of Withdrawal, and Transfer of Administrative Jurisdiction, and Opportunity for Public Meeting; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy has filed an application to modify Public Land Order 3457, which withdrew 1,078.81 acres of public lands on behalf of the Department of Navy for use as a Microwave Space Relay Station. The Department of the Navy has requested that the withdrawal be changed to allow the land to be used as a mountain warfare training site. The Department of the Navy also requested that the administrative jurisdiction for the land be permanently transferred to them. Public Land Order 3457 was published in the **Federal Register** on October 7, 1964 (29 FR 13815). The land has been and will remain withdrawn from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by February 24, 2003.

ADDRESSES: Comments and meeting requests should be sent to Howard K. Stark, Chief, Branch of Lands Management (CA–930), Bureau of Land Management, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886.

FOR FURTHER INFORMATION CONTACT: Duane Marti, Realty Specialist, Bureau of Land Management, 916–978–4675.

SUPPLEMENTARY INFORMATION:

1. The Department of the Navy has filed an application to modify Public Land Order 3457, which withdrew the following described public land from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws, subject to valid existing rights for military purposes:

San Bernardino Meridian

T. 17 S., R. 5 E.,
Sec. 23, lot 2, E½SW¼ and SE¼;
Sec. 24, lots 20 and 22, and SW¼;
Sec. 25, W½;
Sec. 26, lots 1 and 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼.

The area described contains 1,078.81 acres in San Diego County.

2. The Department of the Navy has requested that the administrative jurisdiction of the land described above in paragraph 1 be permanently transferred to the Department of the Navy, so that the land can be managed for use as a mountain warfare training site and shall thereafter be subject to all laws and regulations applicable thereto, subject to valid existing rights.

3. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, objections, or requests for public meetings in connection with the proposed actions described in this notice, may present their views in writing to the Chief, Branch of Lands Management, California State Office, Bureau of Land Management, at the address listed above. If the authorized officer determines that a public meeting should be held, it will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). A notice of the time and place would be published in the **Federal Register** at least 30 days before the scheduled date of the public meeting.

4. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

5. The subject land is currently withdrawn for the Department of the Navy for military purposes and therefore is segregated from settlement, sale, location, or entry under the general land laws, location and entry under the United States mining laws, and the operation of the mineral leasing laws. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the land, as determined by the Bureau of Land Management and the Department of the Navy.

Dated: September 19, 2002.

Howard K. Stark,

Chief, Branch of Lands Management.

[FR Doc. 02–29822 Filed 11–22–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Antitrust Division

Responses to Public Comments on Proposed Final Judgment in United States v. The Manitowoc Co., Inc., et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States hereby publishes the two public comments on the proposed Final Judgment in *United States* v. *The Manitowoc Co., Inc., Grove Investors, Inc., and National Crane Corp.,* Civil No. 1:02 CV 01509 (RL), filed in the United States District Court for the District of Columbia, together with the government's responses to the comments.

On July 31, 2002, the United States filed a Complaint that alleged that The Manitowoc Company Inc.'s proposed acquisition of Grove Investors, Inc. (and its subsidiary, National Crane Corp.) would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in production and sale of medium- and heavy-lift boom trucks in North America. The proposed Final Judgment, requires the defendants to divest either Manitowoc's

or Grove's boom truck business to a purchaser acceptable to the United States.

Public comment was invited within the statutory 60-day comment period. The public comments and the United State's responses thereto are hereby published in the **Federal Register**, and shortly thereafter these documents will be attached to a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act and filed with the Court, together with a motion urging the Court to enter the proposed Judgment. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are currently available for inspection in Room 200 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. (The United State's Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act will be made available at the same locations shortly after they are filed with the Court.) Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

U.S. Department of Justice, Antitrust Division

November 11, 2002.

Mr. Richard M. Beine,

President, Busey Truck Equipment, Inc., 1840 S. Farmington Road, Jackson, M0 63755.

Re: Comment on Proposed Final Judgment in *United States* v. *The Manitowoc Co., Inc., Grove Investors, Inc., and National Crane Corp.,* No. 1:02CV01509 (D.C.C., filed July 31, 2002).

Dear Mr. Beine: This letter responds to your September 25th letter, commenting on the proposed Final Judgment submitted for entry in the above case. The government's Complaint in the case charged that a combination of Manitowoc and Grove would substantially reduce competition in production and sale of medium- and heavy-lift boom truck in North America. The proposed Judgment would resolve these competitive concerns by requiring defendants promptly to divest either Manitowoc's Grove's boom truck business.

In your comment, you observed that defendant Manitowoc has consistently failed to provide support for its line of unloader and tailgator products. In February 2002, long before the government filed its proposed Judgment in this case, you offered to purchase this line of products from Manitowoc. Manitowoc, however, has failed to respond to your offer.

The gravamen of Busey Truck's complaint is Manitowoc's apparent unwillingness to sell its unloader and tailgator product lines. However, we can find no competitive justification for requiring a divestiture of Manitowoc's unloader and tailgator product lines. Unloaders and tailagors are small material handling vehicles similar to forklifts that are primarily used for loading and unloading delivery trucks and in warehouse stocking operatings. The United States is unaware of any evidence that suggests a combination of Manitowoc and Grove would adversely affect competition in the production and sale of unloader and tailgator products. Unloaders and tailgators are, at best, minor complements to, not competitive alternatives for, medium- and heavy-lift boom trucks. Divestitures of unloader and tailgator product lines unloader and tailgator product lines is not required either to cure an alleged violation or to ensure the viability of the divested boom truck assets. The Judgment, as currently written, fully addressed the competitive issues raised by Manitowoc's acquisition of Grove's boom truck business.

Thank you for bringing your concern to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

Busey Truck Equip., Inc.

J. Robert Kramer II,

Chief, Litigation II Section, Antitrust Division, US Department of Justice, 1401 H Street NW Suite 3000, Washington DC 20530.

September 25, 2002.

Re: The Manitowoc Co., Inc.

Dear Sir: In February 2002, we had our attorney prepare a letter of intent to the Manitowoc Co to express our interest in purchasing the Trolley Boom Line (Unloaders, tailgators) of products. They have never responded to our letter of intent. May 1, 2002 FEMCO a subsidiary of the Manitowoc Co informed us they would be taking over management of this line of products.

Our primary interest in acquiring the Trolley Boom Line (unloaders, tailgators) of products is because Manitowoc has continuously failed to provide the product support needed for this product as it is such a small part of their conglomeration. Sir, these trolley booms are our business' lifeblood.

When we tried to purchase this line in February we had the support of all of the dealers that already sell this line. They believe we can continue on the great USTC name of these trolley booms.

We are still interested in the purchase of the Trolley Boom Line of products. We have the expertise and experience needed to support this product line. However we have no interest in the purchasing of the Boom Truck Line ran out of Georgetown TX.

We trust these comments are relevant to your inquiry of the Manitowoc Co Inc. Please contact us if you need any other information.

Thank you,

Richard M. Beine,

President,

rbeine@atprs.net.

U.S. Department of Justice, Antitrust Division

November 11, 2002.

Mr. S.M. Oliva,

President, Citizens for Voluntary Trade, 2000 F Street, NW, Suite 315, Washington, DC 20006.

Re: Comment on Proposed Final Judgment in *United States* v. *The Manitowoc Co., Inc., Grove Investors, Inc., and National Crane Corp.,* No. 1:02CV01509 (D.D.C., filed July 31, 2002).

Dear Mr. Oliva: This letter responds to the comment on the proposed Final Judgment (''Judgment''), which you submitted on behalf of Citizens for Voluntary Trade (''CVT''), a nonprofit association that purportedly provides supporters of capitalism and individual rights an opportunity to participate in public policy discussions related to antitrust and government regulation of business. The Complaint in this case charged that a combination of Manitowoc and Grove would substantially reduce competition in medium- and heavy-lift boom trucks. The proposed Judgment would resolve the serious competitive concerns by requiring defendants to divest either Manitowoc's or Grove's boom truck business.

In its comment, CVT asserted that the Court should not require defendants to divest either Manitowoc's or Grove's boom truck business until after the United States demonstrates that defendants' combination actually will result in higher prices charged to purchasers of medium- and heavy-lift boom trucks. Even then, CVT contends, the Court should not order a divestiture since consumers can simply decide not to purchase boom trucks. In essence, CVT's argument is that the antitrust laws are an unnecessary (and perhaps unconstitutional) government infringement on defendants' contracting freedom, and in that context, the boom truck business divestiture ordered by the proposed Judgment is an unauthorized government ''taking'' of defendants' private property.

In determining whether to enter the proposed Judgment, the Court must decide whether entry of the Judgment would be in the ''public interest.'' To make that determination the Court, inter alia, must carefully review the relationship between the relief that has been ordered in the proposed Judgment and the allegations of the government's Complaint. Applying that standard in this case, the Court's entry of the proposed Judgment surely would be ''within the reaches'' of the public interest (*United States* v. *Bechtel Corp., Inc.,* 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981)), for it would alleviate the serious competitive concerns regarding the proposal to combine two of the nation's three major boom truck producers by requiring defendants promptly to divest one of their boom truck businesses. To require the government to prove the allegations of its Complaint before the Court rules on the appropriateness of the parties' agreed-upon

relief would effectively turn every government antitrust case into a full-blown trial on the merits of the parties' claims, and thereby seriously undermine the effectiveness of antitrust enforcement by use of consent decrees. And in any event, the government is not required to demonstrate, as CVT asserts, an actual post-merger price increase in order to establish that an acquisition will prove anticompetitive. ''Section 7 is, after all, concerned with probabilities, not certainties.'' *F.T.C.* v. *H.J. Heinz Co.,* 246 F.3d 708, 719 (D.C. Cir. 2001) (emphasis original, citations omitted).

As to CVT's suggestion that the antitrust laws constitute an unconstitutional infringement upon freedom to contract, the Supreme Court has consistently held, in a line of cases stretching as far back as Standard Oil, that is it not the antitrust laws that impair individual freedom to contract, but private agreements or acts that unduly diminish competition and tend to raise prices to consumers. By purging our nation's economy of such private restraints on competition, the antitrust laws protect and enhance, not undermine, individual freedoms, and these laws do not otherwise contravene the Constitution. *See also United States* v. *Standard Oil Co.,* 221 U.S. 1, 52–70, esp. 58, 68–70 (1911). *See also United States* v. *E.I. duPont de Nemours & Co.,* 366 U.S. 316, 327 (1961) (''If the Court concludes that other measures will not be effective to redress a violation, and that complete divestiture is a necessary element of a effective relief, the Government cannot be denied the latter remedy because economic hardship, however severe, may result. * * * This proposition is not novel; it is deeply rooted in antitrust law and has never been successfully challenged.'')

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,
Chief, Litigation II Section.

United States of America, Plaintiff, v. The Manitowoc Company, Inc., Grove Investors, Inc., and National Crane Corp., Defendants; Comments of Citizens for Voluntary Trade to the Proposed Final Judgment

[Case No. 02CV0159]
Judge: Royce Lamberth

Pursuant to 15 U.S.C. 16(b)–(h) and the **Federal Register** notice filed by the United States on August 22, 2002, Citizens for Voluntary Trade respectfully submits the following comments to the proposed final judgment filed by the parties on July 31, 2002.

Introductory Statement

Citizens for Voluntary Trade (''CVT'') is a District of Columbia nonprofit association organized in 2002. CVT's mission is to provide supporters of capitalism and individual rights with opportunities to participate in public policy discussions related to antitrust and government regulation of business. CVT performs this function, in part, by filing comments in antitrust cases brought by the Department of Justice, the Federal Trade Commission, and other federal and state regulatory agencies.

Neither CVT nor its members have a financial interest in the outcome of this case. CVT has no pre-existing relationship with the defendants, and has not received any financial support from the defendants or any outside corporation in connection with this case.

Comments

The government employs a simple premise in this case: Combining the first and third largest boom truck crane manufacturers will harm consumers by increasing prices and reducing innovation. As with most pre-merger prosecutions, the government can produce no evidence to prove their allegations; instead, the public is forced to accept speculation as to what might happen in the future. Relieved of any burden to present facts, the government can easily demonstrate the possibility of consumer harm, and thus justify its preemptive acts against the defendant companies.

CVT believes, however, that ignoring facts is dangerous. It's one thing to draw inferences from limited facts; it's quite another to predict outcomes without any factual basis. The latter is a function best left to gypsies and psychics. The Department of Justice's track record shows they are poor predictors of events that may never take place. Traditionally, governments limit themselves to prosecuting defendants after the alleged crime has taken place. With the exception of antitrust, there is no other area of law where the government grants itself the power to act before any crime (or victim) is established.

The government claims, in rebuttal, that the defendants committed a crime just by agreeing to merge. This, they say, is evidence of anticompetitive actions that violate the Clayton Act.[1] But if this is a crime, then where's the victim? The government says consumers are the victim, because the merger will ''increase the likelihood'' of price increases.[2] This begs two questions. First, will the merger actually increase prices, or does it just raise the mathematical probability of such an act? And second, assuming prices are raised post-merger, does this constitute an actual harm to consumers? We believe the answer to both questions is no.

The government relies on market concentration to judge the ''likelihood'' of price increases. They claim that the defendants, left to merge without government interference, would control 60% of the relevant market. Furthermore, the merged defendants and the remaining principal competitor would control 90% of the market.[3] The government concludes the reduction of large competitors from three to two raises the ''likelihood'' of price increases. That's hardly a given. While the combined Manitowoc-National Crane company would have a 60% market share, the number-two firm would still have 30%. While it is likely that Manitowoc could increase prices due to its higher market share, it's just as likely the remaining competitor could lower their own prices in an effort to attract new customers. This could, conceivably, increase the competitor's market share and reduce Manitowoc's dominance. In any case, both scenarios are ''likely,'' and the government offers no conclusive evidence to favor its own scenario has a greater probability of prevailing. Since the government won't allow the merger to occur, we'll never know.

Even if a price increase did occur post-merger, it would not, by itself, constitute a harm to consumers. Certainly it wouldn't injure any legal rights of consumers. Nothing in federal law or the United States Constitution guarantee individuals the right to affordable medium- and heavy-lift boom trucks. The survival of the human race does not depend on the continued availability of such trucks. Nor does a price increase for such trucks deny any general constitutional right enjoyed by consumers, such as the right to free speech or due process of law. Indeed, ''consumers'' are not a group recognized by the Constitution; that document only addresses the rights of individuals. To the extent the Constitution recognizes groups at all, it is in the context of general citizenship (separating U.S. citizens from ''Indians not taxed,'' for example[4] or to remedy historical wrongs against a particular group, as was the case with the Reconstruction amendments.[5] In all other contexts, the Constitution frowns upon arbitrary classification of citizens.[6]

Consumers are not a historically oppressed class. Quite the contrary, American consumers enjoy an unprecedented level of power to dictate economic outcomes. Unlike the traditionally centrally planned economies of Europe, the American marketplace is principally governed by consumer demand. If customers don't want a product, they don't buy it, and the product's producer will fail to make a profit. Producers are typically in the business of satisfying customer demands. At the same time, however, it is understood that the producers own their businesses. A firm can produce as much or as little of their product as they choose, and may charge whatever price they want; the customer has the right to reject the producer's price. But in a market economy, the consumer cannot demand a producer turn over his goods to them. Capitalism requires the voluntary trade of goods and services; that is, trade according to mutually agreeable terms.

The government wants none of that. Instead, under the facade of ''antitrust'' laws, the Department of Justice seeks to award consumers the ability to demand goods and services free of the constraints of voluntary trade. If producers want to raise the prices they ask of consumers, the government smears that behavior as ''anticompetitive.'' Antitrust theory itself holds that just above any price increase initiated by producers is presumptively bad. This despite the fact that increased prices lead to increased profits, which in turn allow producers to increase

[1] Complaint at 3.

[2] Id. at 2.

[3] Id. at 7.

[4] U.S. Const. art. I, § 2, cl. 3.

[5] U.S. Const. amends. XIII, XIV, & XV.

[6] See, e.g., U.S. Const. art. IV, § 2, cl. 1.

their capacity, develop new and improved products, and focus on improving overall customer service. No firm could provide superior products to customers at a sustained loss.

The government understands this, though they're loathe to admit it. In paragraph 17 of the complaint in this case, the Department of Justice describes some of the reasons for the dominance of just three firms in the boom truck market: ''superior production capacity and capability, strong dealer networks, broad product lines and strong reputation for safety and reliability.'' The government notes, correctly, that it would be difficult for any new competitor to quickly enter the market because they would need to ''establish a strong reputation'' in order to effectively compete with the dominant firms.[7] But this is not a weakness of the market, but a strength. Every factor the government lists above is the result of honest, ethical activity. Manitowoc's superior production capacity is not the result of coercion. National Crane's strong reputation is not derived from violent acts against competitors. This, essentially, is the difference between ''market power'' derived from free trade, and ''political power'' derived from the use of force. The government's case fails to make this crucial distinction.

The remedy in the proposed final judgment replaces market power with political power. The defendants are forced to divest one of their crane businesses to a yet-to-be-determined third party. The government says this will protect competition. It does no such thing. ''Competition'' only exists in a capitalist economy; a forced divestiture is hardly capitalist, since it's neither voluntary nor based on respect for property rights. In a capitalist system, the marketplace decides economic outcomes. In the Department of Justice's system, however, economic outcomes are decided by government mandates. Such is the case here. The government dislikes the potential post-merger structure of the boom truck market, so they brought this case to rearrange things to their liking. If the government did not have a monopoly on the use of political force, it would not be able to obtain this result.

And far from ''protecting'' consumers, the government's remedy here denies consumers the fundamental right to act for themselves. The government assumes consumers won't pay any price increase that may result from the merger. But there's no proof of this hypothesis in the record. Consumers often pay higher prices if they feel the product is worth it, or it they believe that the product will improve in the future. Consumers are certainly a far better judge of these things than attorneys at the Department of Justice. The final judgment's remedy wrecks all that, however. By employing its political power, the government has stripped consumers of their economic power.

Finally, there is an obvious contradiction in the government recognizing the factors behind Manitowoc's dominance on the one hand, but ignoring these same factors in fashioning the final judgment's remedy. The government says a new firm is unlikely to enter the market because of the need to ''establish a strong reputation,'' among other things. So how does creating a new competitor by force accomplish this? Does the government believe that a reputation can be established simply by handing a corporation assets and customers they didn't actually earn? If that's the case, why doesn't the Department of Justice simply allocate resources and market shares in all sectors of American industry? They obviously consider their judgment superior to consumers.

Conclusion

The government claims to serve the ''public interest'' in presenting this proposed final judgment. But it's unclear what those interests are. It's certainly not legal interests, since no constitutional or statutory right of consumers was violated by the defendants. And it's not economic interests, since a capitalist economy is built on voluntary actions free of government interference. ''Free competition enforced by law is a grotesque contradiction in terms,''[8] not to mention a highly unstable way to govern an economy. The companies prosecuted in this case did compete and are competing. The government just doesn't like the outcome of that competition, so they've come to court seeking to overrule the judgment of consumers and producers. The result of the government's actions is to introduce fear and uncertainty into a market that previously functioned well. It's hard to see how that serves any identifiable ''public interest.''

Since it is unlikely the Department of Justice will see the error of its ways, CVT respectfully asks the Court to consider our comments and take appropriate action. We believe the only just action here is to reject entry of the proposed final judgment, and to dismiss the government's complaint with prejudice.

Dated: October 18, 2002.

Respectfully Submitted,

Citizens for Voluntary Trade

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[7] Complaint at 7.

[8] Ayn Rand, Antitrust: The Rule of Unreason, in The Voice of Reason 255 (Leonard Peikoff, ed., 1990).

PENSION AND WELFARE BENEFITS ADMINISTRATION

[Prohibited Transaction Exemption 2002–51; Application No. D–10933]

Class Exemption to Permit Certain Transactions Identified in the Voluntary Fiduciary Correction Program

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1986 (the Code). The exemption was proposed in conjunction with the Department's Voluntary Fiduciary Correction (VFC) Program, the final version of which was published in the March 28, 2002, issue of the **Federal Register**. The VFC Program allows certain persons to avoid potential civil actions under the Employee Retirement Income Security Act of 1974 (ERISA) initiated by the Department and the assessment of civil penalties under section 502(l) of ERISA in connection with investigation or civil action by the Department. The exemption will affect plans, participants and beneficiaries of such plans and certain other persons engaging in such transactions.

EFFECTIVE DATE: The exemption is effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8540 (not a toll free number) or Cynthia Weglicki, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–5600 (not a toll free number).

SUPPLEMENTARY INFORMATION: On March 28, 2002, the Department published a notice in the **Federal Register** (67 FR 15083) of the pendency of a proposed class exemption from the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The Department proposed the class exemption on its own motion pursuant to section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

The notice of pendency gave interested persons an opportunity to comment or request a public hearing on the proposal. Two (2) public comments were received by the Department. Upon consideration of the comments received, the Department has determined to grant the proposed class exemption subject to certain modifications. These

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

modifications and the comments are discussed below.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising 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 the Executive Order, it was determined that this action is ''significant'' under Section 3(f)(4) of the Executive Order. Accordingly, this action has been reviewed by OMB.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520)(PRA 95), the Department submitted the information collection request (ICR) included in the Proposed Class Exemption to Permit Certain Transactions Identified in the Voluntary Fiduciary Correction to the Office of Management and Budget (OMB) for review and clearance at the time the Notice of the Proposed Class Exemption was published in the **Federal Register** (March 28, 2002, 67 FR 15083). OMB approved the Notice under OMB control number 1210–0118. The approval will expire on November 30, 2003.

The Department solicited comments concerning the ICR in connection with the Notice of Proposed Class Exemption. The Department received no comments addressing its burden estimates and no substantive changes have been made in the final exemption that would affect the Department's earlier burden estimates.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

OMB Number: 1210–0118.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 700.

Frequency of Response: On occasion.

Responses: 700.

Estimated Total Burden Hours: 5,710 hours.

Total Burden Cost (Operating and Maintenance): $272,928.

Discussion of Comments Received

The Department received two comments regarding the proposed class exemption. The commenters requested specific modifications to the proposal in the following areas:

1. Notice to Interested Persons

Both commenters addressed Section IV of the proposed exemption which required applicants to provide notice to interested persons of the transaction and the method of correction. It was noted that, in many cases, applicants who may be subject to the excise taxes under section 4975 of the Code will not be the employer whose employees are covered by the plan, and may be unrelated to the employer.

In this regard, one of the commenters stated that, without the cooperation of the employer, applicants might find it difficult to provide notice to participants and beneficiaries because they would not have access to the participants' and beneficiaries' names and addresses. The commenter further noted that employers might not be willing to provide access to such information due to privacy concerns or concerns that receipt of the notice might cause confusion among the participants and beneficiaries.

In the commenter's view, relief under the exemption should not be conditioned on the cooperation of an employer or other person that is unrelated to the applicant, particularly since the underlying prohibited transaction will have been corrected pursuant to the VFC Program. The commenter proposed that, in the case of an applicant unrelated to the employer whose employees are covered by the plan, the exemption permit notice to be provided to the employer or other plan fiduciary unrelated to the applicant who was not involved in the transaction that is the subject of the VFC Program application, rather than each participant and beneficiary. The commenter noted that the unrelated fiduciary could then determine whether plan participants and beneficiaries should be notified of the underlying transaction and its correction under the VFC Program.

The other commenter stated generally that the notice requirement was unnecessary and burdensome, but subsequently clarified that it had the same concerns as the first commenter.

The Department concurs with the commenters' views on the notice issue. In this regard, the Department notes that the proposed exemption does not contain a definition of interested persons to whom notice must be provided. It is the view of the Department that, where an applicant is unaffiliated with, and unrelated to, the employer whose employees are covered by the plan, the notice requirement will be deemed satisfied if the applicant provides notice to a fiduciary of the plan who is unrelated to the applicant and all other parties involved in the prohibited transaction. In many cases, this may be the employer or an administrative committee composed of officers and employees of the employer. However, the Department cautions that the notice requirement will not be considered satisfied if notice is given to an employer who is not unrelated to all parties involved in the prohibited transaction. Under no circumstances should plan assets be used to pay for the notice.

2. Three Year Rule

One of the commenters also was concerned about Section II.F. of the proposed exemption, which provided that an applicant seeking relief under the exemption could not have taken advantage of the relief provided under the VFC Program and this exemption for a similar type of transaction identified in the current application during the period which is three years prior to the submission of the current application. The commenter argued that applicants that are service providers, as opposed to plan officials, should be permitted to take advantage of the VFC Program as often as necessary without regard to the three year rule.

The commenter stated that subjecting service providers to the three year rule would not, in all cases, further the rule's purpose of ensuring that relief is not provided to fiduciaries who repeatedly make the same legal mistake. In contrast to plan sponsors, for example, service providers such as broker-dealers, banks and insurance companies may engage in numerous transactions with plans each day which could be prohibited except for the availability of a statutory or administrative exemption. The commenter noted that, if the plan fiduciary directing the transaction is relying on an exemption to deal with a party in interest, and that fiduciary is factually incorrect on an element of the exemption, the broker-dealer may

engage in many transactions that would need relief under this exemption.

As an example, the commenter explained that a service provider could enter into a transaction that otherwise would be prohibited based on a fiduciary's representation that the QPAM class exemption (PTE 84–14) (49 FR 9494, March 13, 1984) applied. The QPAM class exemption requires, among other things, that neither the QPAM, an affiliate, nor any owner of a 5% or more interest in the QPAM, have been convicted or released from imprisonment as a result of certain crimes within the ten years immediately preceding the transaction. Information regarding past crimes of affiliates and 5% owners of the QPAM is not likely to be within the knowledge of the service provider, and the service provider must rely on the QPAM for assurance that the condition is satisfied.

The commenter suggested that Section II.F. be modified to provide an exception from the three year rule for applicants that are banks, broker-dealers or insurance companies (or affiliates thereof) which did not exercise discretionary authority or control to cause the plan to enter into the transaction. The commenter proposed that the exception be limited to applicants that were parties in interest (including fiduciaries) solely by reason of providing services to the plan (or solely by reason of a relationship to such service provider described in section 3(14)(F), (G), (H), or (I) and the corresponding provisions of the Code), and that ''did not believe that an exemption was unavailable'' with respect to the transaction. The commenter suggested that the applicant must have established written policies and procedures reasonably designed to ensure compliance with the prohibited transaction rules, and have engaged in periodic monitoring for compliance, at the time of the transaction.

The Department agrees that, in the narrow circumstances described above, such service providers should not be excluded from obtaining relief under the exemption by the three year rule. Accordingly, the Department has modified Section II.F. to clarify that the exemption will continue to be available notwithstanding the applicant's inability to satisfy the three year rule, provided that:

- The applicant was a broker-dealer registered under the Securities Exchange Act of 1934, a bank supervised by the United States or a State thereof, a broker-dealer or bank subject to foreign government regulation, an insurance company qualified to do business in a State, or any affiliate thereof;
- The applicant was a party in interest (including a fiduciary) solely by reason of providing services to the plan or solely by reason of a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) (and/or the corresponding provisions of section 4975 of the Code);
- Neither the applicant nor any affiliate (i) was a fiduciary (within the meaning of section 3(21)(A) of ERISA) with respect to the assets of the plan involved in the transaction, and (ii) used its discretion to cause the plan to engage in the transaction;
- The individuals acting on behalf of the applicant in connection with the transaction had no actual knowledge or reason to know that the transaction was not exempt pursuant to a statutory or administrative exemption under ERISA and/or the Code; and
- Prior to the transaction, the applicant established written policies and procedures that were reasonably designed to ensure compliance with the prohibited transaction rules and the applicant engaged in periodic monitoring for compliance.

3. Participant Loan Repayments

The Department has made one additional modification to the final exemption. As discussed more fully below, the exemption provides relief for certain transactions described in the VFC Program, including the failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulations at 29 CFR 2510.3–102. Subsequent to the publication of the final VFC Program, the Department issued guidance stating that applicants may correct the failure to forward participant loan repayments to a plan in a timely fashion under the VFC Program in the same manner.[2] Accordingly, the Department revised the language of Section I.A. of the exemption to explicitly cover the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer.

[2] *See* Frequently Asked Questions on the VFC Program, at *http://www.dol.gov/pwba/faqs/faq_vfcp2.html.* For the Department's views on the time frames for repayment of participant loans to pension plans, *see* the preamble to the final participant contribution regulation, 29 CFR section 2510.3–102, published at 61 FR 41220, 41226 (August 7, 1996). *See* also DOL Advisory Opinion No. 2002–02A (May 17, 2002).

Description of the Exemption

1. Scope

The exemption provides relief from the sanctions imposed under section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for certain eligible transactions identified in the VFC Program. The exemption does not provide relief for any transactions identified in the VFC Program that are not specifically described as eligible transactions under Section I of the exemption.

The four eligible transactions described in the exemption are as follows:

(A) The failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulations at 29 CFR section 2510.3–102 and/or the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer.

(B) The making of a loan by a plan at a fair market interest rate to a party in interest with respect to the plan.

(C) The purchase or sale of an asset (including real property) between a plan and a party in interest at fair market value.

(D) The sale of real property to a plan by the employer and the leaseback of such property to the employer, at fair market value and fair market rental value, respectively.

The eligible transactions may be illustrated by the following examples:

Example (1): Corporation A sponsors a pension plan for its employees. Corporation A borrowed $100,000 from the plan. The loan was made at an interest rate no less than that available for a loan with similar terms (for example, the amount of the loan, amount and type of security, repayment schedule, and duration of loan) obtainable in an arm's-length transaction between unrelated parties.

Example (2): Corporation B sponsors a pension plan for its employees. The plan sold a parcel of real property to Corporation B. The price Corporation B paid to the plan was the fair market value of the property as determined by a qualified independent appraiser as of the date of the transaction and reflected in a qualified appraisal report. (If there is a generally recognized market for the property, such as the New York Stock Exchange, the fair market value of the property is the value objectively determined by reference to the price on such market on the date of the transaction, and a determination by a qualified independent appraiser is not required.)

Example (3): Corporation C sponsors a pension plan for its employees. Corporation C sold a parcel of real property to the plan which was simultaneously leased back to Corporation C. The price paid by the plan for the property was its fair market value, and

the rent paid by Corporation C to the plan is the fair market rental value, as determined by a qualified independent appraiser and reflected in a qualified appraisal report. The terms of the lease (for example, rent, duration and allocation of expenses) are not less favorable to the plan than those obtainable in an arm's-length transaction between unrelated parties.

2. General Conditions

Section II of the exemption contains general conditions, as discussed below, which the Department views as necessary to ensure that any transaction covered by the exemption would be in the interests of plan participants and beneficiaries, and to support a finding that the exemption met the statutory requirements of section 4975(c)(2) of the Code.

With respect to a transaction involving delinquent transmittal of participant contributions and/or participant loan repayments to a pension plan, the exemption requires that the contributions or repayments be transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amount otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

Second, the exemption requires that, with respect to the transactions described in Sections I.B., I.C. and I.D., the amount of plan assets involved in the transaction did not exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction. For purposes of this requirement, the 10 percent limitation would apply after aggregating the value of a series of related transactions.

Third, under the exemption, the fair market value of any plan asset involved in a transaction described in Sections I.C. or I.D. must have been determined in accordance with section 5 of the VFC Program. Section 5 of the VFC Program requires that the valuation meet the following conditions: (1) If there is a generally recognized market for the property (*e.g.*, the New York Stock Exchange), the fair market value of the asset is the average value of the asset on such market on the applicable date, unless the plan document specifies another objectively determined value (*e.g.*, the closing price); and (2) if there is no generally recognized market for the asset, the fair market value of that asset must be determined in accordance with generally accepted appraisal standards by a qualified independent appraiser and reflected in a written appraisal report signed by the appraiser. For purposes of these requirements under the VFC Program, an appraiser is considered qualified if the appraiser has met the education, experience and licensing requirements that are generally recognized for appraisal of the type of asset being appraised. An appraiser is ''independent'' if the appraiser is not one of the following, does not own or control any of the following, and is not owned or controlled by, or affiliated with, any of the following: (i) The prior owner of the asset, if the asset was purchased by the plan; (ii) the purchaser of the asset, if the asset was or is now being sold by the plan; (iii) any other owner of the asset, if the plan is not the sole owner; (iv) a fiduciary of the plan; (v) a party in interest with respect to the plan (except to the extent the appraiser becomes a party in interest when retained to perform this appraisal for the plan); or (vi) the VFC Program applicant.

Fourth, under the exemption, the terms of a transaction described in Sections I.B., I.C., or I.D., must have been at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

Fifth, with respect to all of the eligible transactions, the transaction may not have been part of an agreement, arrangement or understanding designed to benefit a party in interest. The Department notes that the intent of this condition is not to deny a direct benefit to the party in interest but, rather, to exclude relief for transactions that are part of a broader overall agreement, arrangement or understanding designed to benefit parties in interest.

Sixth, with respect to all of the eligible transactions, the applicant may not have taken advantage of the relief provided by the VFC Program and the exemption for a similar type of transaction identified in the application during the three-year period prior to the submission of the application. As modified, however, the final exemption contains a limited exception from this condition for service providers. Pursuant to the amended Section II.F., a broker-dealer, bank or insurance company that is a service provider to a plan would not be subject to this condition if it engaged in a prohibited transaction described in Section I, provided that: it was not a fiduciary that used its discretion to cause the plan to engage in the transaction; individuals acting on its behalf in connection with the transaction had no actual knowledge or reason to know that the transaction was not exempt pursuant to a statutory or administrative exemption under ERISA and/or the Code; and, prior to the transaction, it established written policies and procedures that were reasonably designed to ensure compliance with the prohibited transaction rules and it engaged in periodic monitoring for compliance.

3. Compliance with VFC Program

In addition to compliance with the general conditions set forth above, Section III of the exemption requires that the applicant meet the requirements set forth in the VFC Program that are applicable to the particular transaction. The exemption also requires that the applicant have received a no action letter issued by PWBA with respect to such transaction, which must be an eligible transaction otherwise described in Section I of the exemption. However, the fact that an applicant receives a no action letter issued by PWBA should not be viewed as a determination by PWBA that the applicant has satisfied all of the conditions of the exemption. Each applicant must determine whether the pertinent conditions of the exemption have been met.

4. Notice

Notice under the exemption must be given to interested persons within 60 calendar days following the date of the submission of an application under the VFC Program to the Department. Plan assets may not be used to pay for the notice. The exemption does not specify the format or specific content of the notice. However, the notice must include an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average plan participant or beneficiary. The notice also must provide for a period of 30 calendar days, beginning on the date the notice is distributed, for interested persons to provide comments to the appropriate Regional Office of the United States Department of Labor, Pension and Welfare Benefits Administration. The notice must include the address and telephone number of such Regional Office.

A copy of the notice to interested persons, along with an indication of the date on which it was distributed, must be provided to the appropriate Regional Office within the same 60-day period following the date of the submission of the application. Accordingly, applicants under the VFC Program who intend to take advantage of the relief provided under this exemption would indicate on the checklist submitted as part of the VFC Program application that they will, within 60 calendar days following the

date of the submission of the application, provide the Department's Regional Office with a copy of the notice to interested persons.

Notice may be given in any manner that is reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply, the requirement that all assets of an employee benefit plan be held in trust by one or more trustees, and the general fiduciary responsibility provisions of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) In accordance with section 4975(c)(2) of the Code, the Department finds that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries, and protective of the rights of participants and beneficiaries of such plans.

(4) The exemption is supplemental to, and not in derogation of other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The exemption is applicable to a transaction only if the conditions specified in the class exemption are satisfied.

Exemption

Accordingly, the following exemption is granted under the authority of section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I: Eligible Transactions

The sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following eligible transactions described in section 7 of the Voluntary Fiduciary Correction (VFC) Program (67 FR 15061, March 28, 2002), provided that the applicable conditions set forth in Sections II, III and IV are met:

A. Failure to transmit participant contributions to a pension plan within the time frames described in the Department's regulation at 29 CFR section 2510.3–102, (*see* VFC Program, section 7.A.1.), and/or the failure to transmit participant loan repayments to a pension plan within a reasonable time after withholding or receipt by the employer.

B. Loan at a fair market interest rate to a party in interest with respect to a plan. (*See* VFC Program, section 7.B.1.).

C. Purchase or sale of an asset (including real property) between a plan and a party in interest at fair market value. (*See* VFC Program, sections 7.C.1. and 7.C.2.).

D. Sale of real property to a plan by the employer and the leaseback of the property to the employer, at fair market value and fair market rental value, respectively. (*See* VFC Program, section 7.C.3.).

Section II: Conditions

A. With respect to a transaction involving participant contributions or loan repayments to pension plans described in Section I.A., the contributions or repayments were transmitted to the pension plan not more than 180 calendar days from the date the amounts were received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the date the amounts otherwise would have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

B. With respect to the transactions described in Sections I.B., I.C., or I.D., the plan assets involved in the transaction, or series of related transactions, did not, in the aggregate, exceed 10 percent of the fair market value of all the assets of the plan at the time of the transaction.

C. The fair market value of any plan asset involved in a transaction described in Sections I.C. or I.D. was determined in accordance with section 5 of the VFC Program.

D. The terms of a transaction described in Sections I.B., I.C., or I.D. were at least as favorable to the plan as the terms generally available in arm's-length transactions between unrelated parties.

E. With respect to any transaction described in Section I, the transaction was not part of an agreement, arrangement or understanding designed to benefit a party in interest.

F. (1) With respect to any transaction described in Section I, the applicant has not taken advantage of the relief provided by the VFC Program and this exemption for a similar type of transaction(s) identified in the current application during the period which is three years prior to submission of the current application.

(2) Notwithstanding the foregoing, Section II.F.(1) shall not apply to an applicant provided that:

(a) The applicant was a broker-dealer registered under the Securities Exchange Act of 1934, a bank supervised by the United States or a State thereof, a broker-dealer or bank subject to foreign government regulation, an insurance company qualified to do business in a State, or an affiliate thereof;

(b) The applicant was a party in interest (including a fiduciary) solely by reason of providing services to the plan or solely by reason of a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) (and/or the corresponding provisions of section 4975 of the Code);

(c) Neither the applicant nor any affiliate (i) was a fiduciary (within the meaning of section 3(21)(A) of ERISA) with respect to the assets of the plan involved in the transaction and (ii) used its discretion to cause the plan to engage in the transaction;

(d) Individuals acting on behalf of the applicant had no actual knowledge or reason to know that the transaction was not exempt pursuant to a statutory or administrative exemption under ERISA and/or the Code; and

(e) Prior to the transaction, the applicant established written policies and procedures that were reasonably designed to ensure compliance with the prohibited transaction rules and the applicant engaged in periodic monitoring for compliance.

Section III: Compliance with VFC Program

A. The applicant has met all of the applicable requirements of the VFC Program.

B. PWBA has issued a no action letter to the applicant pursuant to the VFC Program with respect to a transaction described in Section I.

Section IV: Notice

A. Written notice of the transaction(s) for which the applicant is seeking relief pursuant to the VFC Program and this exemption, and the method of correcting the transaction, was provided to interested persons within 60 calendar days following the date of the submission of an application under the VFC Program. A copy of the notice was provided to the appropriate Regional Office of the United States Department of Labor, Pension and Welfare Benefits Administration within the same 60-day period, and the applicant indicated the date upon which notice was distributed to interested persons. Plan assets were not used to pay for the notice. The notice included an objective description of the transaction and the steps taken to correct it, written in a manner reasonably calculated to be understood by the average plan participant or beneficiary. The notice provided for a period of 30 calendar days, beginning on the date the notice was distributed, for interested persons to provide comments to the appropriate Regional Office. The notice included the address and telephone number of such Regional Office.

B. Notice was given in a manner that was reasonably calculated, taking into consideration the particular circumstances of the plan, to result in the receipt of such notice by interested persons, including but not limited to posting, regular mail, or electronic mail, or any combination thereof. The notice informed interested persons of the applicant's participation in the VFC Program and intention of availing itself of relief under the exemption.

Signed at Washington, DC, this 11th day of November, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–29799 Filed 11–22–02; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL LABOR RELATIONS BOARD

Order Delegating Authority to the General Counsel; Before Members Wilma B. Liebman, William B. Cowen, and Michael J. Bartlett

November 19, 2002.

The Board is faced with the prospect that it may for a temporary period have fewer than three Members of its statutorily prescribed full complement of five Members. The Board recognizes that it has a continuing responsibility to fulfill its statutory obligations in the most effective and efficient manner possible. To assure that the Agency will be able to meet its obligations, the Board has decided to temporarily delegate to the General Counsel full authority to certify the results of any secret ballot election conducted under the National Emergency provisions of the Labor Management Relations Act, sections 206–210, 29 U.S.C. 176–180.[1] This delegation shall be effective during any time when the Board has fewer than three Members and is made under the authority granted to the Board under sections 3, 4, 6, and 10 of the National Labor Relations Act.

Accordingly, the Board delegates to the General Counsel full and final authority and responsibility on behalf of the Board to certify to the Attorney General the results of any secret ballot elections held among employees on the question of whether they wish to accept the final offer of settlement made by their employer pursuant to section 209(b) of the Labor Management Relations Act, 29 U.S.C. 179(b). This delegation shall cease to be effective whenever the Board has at least three Members.

This delegation relates to the internal management of the National Labor Relations Board and is therefore, pursuant to 5 U.S.C. 553, exempt from the notice and comment requirements of the Administrative Procedure Act. Further, public notice and comment is impractical because of the immediate need for Board action. The public interest requires that this delegation take effect immediately.

All existing delegations of authority to the General Counsel and to staff in effect prior to the date of this order remain in full force and effect, including the December 14, 2001, delegation regarding court litigation authority and the April 1, 1955, delegation by the Board to the General Counsel of the authority and responsibility to conduct secret ballots pursuant to section 209(b) of the Labor Management Relations Act, 29 U.S.C. 179(b). For the reasons stated above, the Board finds good cause to make this order effective immediately in accordance with 5 U.S.C. 553(d).

By direction of the Board.

[1] On December 14, 2001, the Board previously delegated to the General Counsel, on the same basis, full authority on all court litigation matters that would otherwise require Board authorization, effective during any time when the Board has fewer than three Members. *See* 66 FR 65998 (December 21, 2001).

Dated in Washington, DC, November 19, 2002.

Lester A. Heltzer,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 02–29917 Filed 11–22–02; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 11, 2002, the National Science Foundation published a notice in the **Federal Register** of a permit applications received. Permits were issued on November 19, 2002 to: Arthur L. DeVries, Permit No. 2003–013; Joan Myers, Permit No. 2003–2003–015.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 02–29875 Filed 11–22–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a petition dated March 11, 2002, and supplements dated March 21, 22, and 27, 2002 (the Petition), submitted by Mr. David A. Lochbaum, a Nuclear Safety Engineer in the Washington, DC Office of the Union of Concerned Scientists (UCS), and the co-petitioners identified in the petition supplements dated March 21 and March 22, 2002 (the Petitioners). The Petitioners have requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) take action with regard to the nuclear power facilities listed in Attachment 1 to the Petition (multiple nuclear power facilities). The

Petitioners request that the NRC immediately issue Orders to the owners of all operating nuclear power plants to take measures that will reduce the risk from sabotage of irradiated fuel. Specifically, those measures are:

(1) The NRC should ''impose a 72-hour limit for operation when the number of operable onsite alternating current power sources (*i.e.*, emergency diesel generators) is one less than the number in the Technical Specification limiting condition for operation. This 72-hour limit would be applicable when the nuclear plant is in any mode of operation other than hot shutdown, cold shutdown, refueling, or defueled.'' Oconee Nuclear Station does not rely on emergency diesel generators, but ''equivalent protection for its emergency power supply'' should be provided. The NRC should also ''cease and desist issuing NOEDs [Notices of Enforcement Discretion] that allow nuclear reactors to operate for longer periods of time with broken emergency diesel generators.'' This requested action would apply to the facilities listed in Attachment 1 to the Petition.

(2) The NRC should ''impose a minimum 24-hour time-to-boil for the spent fuel pool water. This limit would be applicable at all times.'' This requested action would apply to the facilities listed in Attachment 1 to the Petition.

The Petition also requested that the NRC hold a public meeting to precede ''the Petition Review Board (PRB) non-public meeting regarding this petition'' and assign ''someone other than the Director of NRR [Office of Nuclear Reactor Regulation] to be responsible for our petition. The Deputy Executive Director for Reactor Programs or the Deputy Director of NRR would be acceptable to UCS.''

As the basis for the Petition, the Petitioners cite the need to reduce the risk from sabotage of irradiated fuel.

On March 26, 2002, in lieu of a public meeting, the Petitioners accepted and participated in a telephone conference (teleconference) with the NRC's PRB to discuss the Petition. The transcript of the teleconference was considered as a supplement to the Petition. After the teleconference, the PRB discussed the Petition. The PRB considered the contributions of the Petitioners to the teleconference in deciding on the requests for immediate action and in setting the schedule for the review of the Petition. The PRB concluded that the Petition satisfied the criteria for review under title 10 of the Code of Federal Regulations (10 CFR) Subsection 2.206.

By letter dated May 8, 2002, the NRC staff acknowledged receiving the Petition, informed the Petitioners that the Petition met the requirements for review under 10 CFR 2.206, and the Petition had been referred to the Director of NRR for action and would be acted upon within a reasonable time. The petitioners were also informed in that letter that the NRC staff declined to grant the Petitioners' request for immediate action.

The NRC sent a copy of the proposed Director's Decision to the Petitioners for comment by letter dated September 4, 2002. The Petitioners responded with comments by letter dated September 23, 2002. The Petitioners' comments and the NRC staff responses to the comments are addressed in Enclosure No. 2 and No. 3 to the November 15, 2002, letter to Mr. David A. Lochbaum, Union of Concerned Scientists.

The Director, NRR, concluded that the information contained in the Petition does not warrant NRC staff action to: ''Impose a 72-hour limit for operation when the number of operable onsite alternating current power sources (*i.e.*, emergency diesel generators) is one less than the number in the Technical Specification limiting condition for operation'' during plant operation. In addition, the Director, NRR, concluded that the information contained in the Petition does not warrant NRC staff action to ''cease and desist issuing NOEDs that allow nuclear reactors to operate for longer periods of time with broken emergency diesel generators.'' These requests are denied.

With regard to the Petitioners' second request, that the NRC ''impose a minimum 24-hour time-to-boil for the spent fuel pool water. This limit would be applicable at all times,'' the Director, NRR, has concluded that this request is partially granted by staff actions already taken. However, for the reasons discussed in the Director's Decision, the NRC staff concludes that the actions specifically requested by the Petitioners are not necessary. The reasons for these decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–02–07), the complete text of which is available in the Agencywide Documents Access and Management System (ADAMS) for inspection in the Commission's Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically accessible in ADAMS through the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm.html* (ADAMS Accession No. ML022800647). Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr@nrc.gov*.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 15th day of November, 2002.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–29873 Filed 11–21–02; 8:45 am]

BILLING CODE 7590–01–P

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 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 the individual authorities established under Schedule C between between October 01, 2002 and October 31, 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 C

Broadcasting Board of Governors

Special Assistant to the Director, International Broadcasting Bureau. Effective October 11, 2002.

Special Assistant to the Director, International Broadcasting Bureau of America. Effective October 23, 2002.

Consumer Product Safety Commission

Director, Office of Congressional Relations to the Chairman. Effective October 4, 2002.

Executive Assistant to the Chairman. Effective October 31, 2002.

Department of Agriculture

Special Assistant to the Administrator, Risk Management Agency. Effective October 18, 2002.

Confidential Assistant to the Administrator, Agricultural Marketing Service. Effective October 24, 2002.

Department of Commerce

Confidential Assistant to the Under Secretary for Intellectual Property and Director of the U.S. Patent and Trademark Office. Effective October 2, 2002.

Senior Advisor to the Under Secretary for Export Administration. Effective October 4, 2002.

Special Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration. Effective October 9, 2002.

Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Planning. Effective October 9, 2002.

Special Assistant to the Director, Advocacy Center. Effective October 17, 2002.

Director of Intergovernmental Affairs to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 22, 2002.

Department of Defense

Special Assistant to the Principal Deputy Under Secretary of Defense (Comptroller), Deputy Under Secretary of Defense (Management Reform). Effective October 10, 2002.

Defense Fellow to the Special Assistant Secretary of Defense (White House Liaison). Effective October 30, 2002.

Department of Education

Special Assistant to the Senior Advisor to the Secretary. Effective October 2, 2002.

Special Assistant to the Director, Faith-Based and Community Initiative Center. Effective October 3, 2002.

Special Assistant to the Director, White House Initiative on Tribal Colleges and Universities. Effective October 15, 2002.

Deputy Assistant Secretary for Policy to the Assistant Secretary for Elementary and Secondary Education. Effective October 22, 2002.

Special Assistant to the Chief Financial Officer. Effective October 23, 2002.

Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective October 28, 2002.

Confidential Assistant to the Special Assistant. Effective October 28, 2002.

Department of Energy

Special Assistant to the Director, Office of Economic Impact Diversity. Effective October 1, 2002.

Department of Health and Human Services

Special Assistant to the Commissioner, Food and Drug Administration. Effective October 31, 2002.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective October 31, 2002.

Department of Housing and Urban Development

Deputy Assistant Secretary for Congressional Relations to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective October 3, 2002.

Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective October 3, 2002.

Deputy Assistant Secretary for Legislation Affairs to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective October 4, 2002.

Special Counsel to the General Counsel. Effective October 31, 2002.

Department of Justice

Special Assistant to the Assistant Attorney General, Civil Rights Division. Effective October 11, 2002.

Department of Labor

Special Assistant to the Assistant Secretary for Disability Employment. Effective October 2, 2002.

Special Assistant to the Director, 21st Century Workforce. Effective October 16, 2002.

Special Assistant to the Administrator for Employment Standards. Effective October 16, 2002.

Department of the Navy (DOD)

Confidential Assistant to the Assistant Secretary of the Navy (Installations and Environment). Effective October 4, 2002.

Department of State

Public Affairs Specialist to the Assistant Secretary for Western Hemisphere Affairs. Effective October 11, 2002.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective October 11, 2002.

Senior Advisor to the Assistant Secretary, Western Hemisphere Affairs. Effective October 11, 2002.

Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective October 21, 2002.

Staff Assistant to the Deputy Assistant Secretary, Bureau of European and Eurasian Affairs. Effective October 21, 2002.

Department of Transportation

Chief of Staff to the Federal Aviation Administrator. Effective October 18, 2002.

Associate Director to the Assistant Secretary for Governmental Affairs. Effective October 21, 2002.

Deputy Assistant Secretary to the Assistant Secretary for Aviation and International Affairs. Effective October 21, 2002.

Special Assistant to the Director of Scheduling and Advance. Effective October 30, 2002.

Department of the Treasury

Special Assistant to the Chief of Staff. Effective October 8, 2002.

Director of Legislative and Intergovernmental Affairs to the Director of the U.S. Mint. Effective October 17, 2002.

Special Assistant to the Deputy Assistant Secretary for Management and Budget. Effective October 28, 2002.

Deputy Assistant Secretary (Policy Coordination) to the Assistant Secretary for Economic Policy. Effective October 31, 2002.

Department of Veterans Affairs

Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective October 28, 2002.

Environmental Protection Agency

Senior Advisor to the Assistant Administrator, Office of Solid Waste and Emergency Response. Effective October 25, 2002.

Congressional Liaison Specialist to the Associate Administrator for Congressional and Intergovernmental Relations. Effective October 28, 2002.

Federal Maritime Commission

Counsel to the Commissioner to the Commissioner. Effective October 28, 2002.

General Services Administration

Senior Advisor to the Regional Administrator, National Capital Regional. Effective October 4, 2002.

National Mediation Board

Confidential Assistant to the Chairman/Board Member. Effective October 25, 2002.

Occupational Safety and Health Review Commission

Confidential Assistant to the Member (Commissioner), Occupational Safety and Health Review Commission. Effective October 28, 2002.

Counsel to the Member (Commissioner). Effective October 28, 2002.

Office of Management and Budget

Confidential Assistant to the Associate Director for Administration. Effective October 31, 2002.

Office of Science and Technology Policy

Confidential Assistant to the Associate Director for Science. Effective October 3, 2002.

Office of the United States Trade Representative

Confidential Assistant to the Deputy, United States Trade Representative. Effective October 7, 2002.

Confidential Assistant to the Chief of Staff. Effective October 17, 2002.

Overseas Private Investment Corporation

Investment Development Associate to the Vice President for Investment Development and Economic Growth. Effective October 24, 2002.

President's Commission on White House Fellowships

Public Relations Coordinator to the Associate Director, President's Commission on White House Fellowships. Effective October 11, 2002.

Securities and Exchange Commission

Confidential Assistant to the General Counsel. Effective October 1, 2002.

Senior Advisor to the Chairman. Effective October 11, 2002.

Small Business Administration

Senior Advisor to the Assistant Administrator for Congressional Affairs. Effective October 11, 2002.

Social Security Administration

Special Assistant to the Deputy Commissioner for Disability and Income Security Programs. Effective October 11, 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. 02–29849 Filed 11–22–02; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 69577, November 18, 2002].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, November 20, 2002, at 10 a.m.

CHANGE IN THE MEETING: Time Change/Additional Item.

The Closed Meeting scheduled for Wednesday, November 20, 2002 at 10 a.m. was changed to Wednesday, November 20, 2002 at 10:45 a.m.

The following item was added to the Closed Meeting scheduled for Wednesday, November 20, 2002: amicus consideration.

Commissioner Campos, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 20, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–30033 Filed 11–21–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46844; File No. SR–Phlx–2002–74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Date for Deployment of the ROT Access System

November 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b-4[2] thereunder, notice is hereby given that on November 8, 2002, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to set forth the date of deployment of its system[3] designed to enable Registered Options Traders (''ROTs'') to place limit orders directly onto the limit order book through electronic interface with AUTOM.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to state that the Exchange will deploy its system to enable Registered Options Traders (''ROTs'') and specialists on the Exchange's options floor to place limit orders directly onto the limit order book through electronic

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (Order approving SR–Phlx–2002–04).

[4] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

interface with AUTOM (''ROT Access System'') on November 11, 2002.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act [5] in general, and with section 6(b)(5) of the Act [6] in particular, in that it is designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposal effects a change in an existing order-entry or trading system of the Exchange that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system, it has become effective pursuant to section 19(b)(3)(A) of the Act [7] and subparagraph (f)(5) of rule 19b–4 [8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–74 and should be submitted by December 16, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29871 Filed 11–22–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(5)

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46841; File No. SR–Phlx–2001–104]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to Clerks on the Exchange's Options Floor

November 15, 2002.

On December 18, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, a proposal to adopt Phlx Rule 1090, Clerks, to define and set forth permitted and prohibited activities of Clerks on the Exchange's Options Floor. On June 27, 2002, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On October 25, 2002, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] On September 25, 2002, notice of the proposed rule change and Amendment No. 1 was published thereto in the **Federal Register**.[5] The Commission received no comments on the proposal. This order approves the proposed rule change and Amendment No. 1, accelerates approval of Amendment No. 2, and solicits comment from interested persons on Amendment No. 2.

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act [7] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should provide guidance as to the roles and responsibilities of Clerks on the Exchange's Options Floor and should clarify the types of activities in which Clerks may and may not engage. As a result, the Commission believes that the proposed rule change should assist the Exchange in its surveillance for potential violation of Exchange rules.

The Commission finds good cause for approving Amendment No. 2 prior to the 30th day after publication of notice of filing. The Commission notes that Amendment No. 2 makes only a clarification to the proposed rule text.[8] Accordingly, the Commission believes that there is good cause consistent with Section 19(b)(2) of the Act [9] to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated June 26, 2002 (''Amendment No. 1'').

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Frank Genco, Division, Commission, dated October 25, 2002 (''Amendment No. 2''). In Amendment No. 2, Phlx replaces the word ''person'' with the word ''Clerk'' in proposed Commentaries .01 and .02 to proposed Phlx Rule 1090.

[5] *See* Securities Exchange Act Release No. 46505 (September 17, 2002), 67 FR 60273.

[6] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 4.

[9] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File No. SR–Phlx–2001–104 and should be submitted by December 16, 2002.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change, as amended, (SR–Phlx–2001–104) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–29872 Filed 11–22–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 26, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Secondary Market Assignment and Disclosure Form.

No.: 1088.

Frequency: On occasion.

Description of Respondents: Secondary market participants.

Responses: 5,000.

Annual Burden: 7,500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–29851 Filed 11–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 26, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Officer for Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Prime Contracts Program Quarterly Report Part A and B.

No's: 843A & 843B.

Frequency: On occasion.

Description of Respondents: Procurement center representatives.

Responses: 63.

Annual Burden: 1020.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–29852 Filed 11–22–02; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3467]

State of Ohio

As a result of the President's major disaster declaration on November 18, 2002, I find that Hancock, Ottawa, Paulding, Putnam, Seneca and Van Wert Counties in the State of Ohio constitute a disaster area due to damages caused by severe storms and tornadoes occurring on November 10, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 17, 2003 and for economic injury until the close of business on August 18, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

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 above location: Allen, Auglaize, Crawford, Defiance, Hardin, Henry, Huron, Lucas, Mercer, Sandusky, Wood and Wyandot in the State of Ohio; and Adams and Allen counties in the State of Indiana.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.875
Homeowners Without Credit Available Elsewhere	2.937
Businesses With Credit Available Elsewhere	6.648
Businesses and Non-profit Organizations Without Credit Available Elsewhere	3.324
Others (Including Non-profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.324

The number assigned to this disaster for physical damage is 346712. For economic injury the number is 9S6300 for Ohio; and 9S6400 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 19, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–29913 Filed 11–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas

Amendment #2

In accordance with notices received from the Federal Emergency Management Agency, dated November 15, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on October 24, 2002 and continuing through November 15, 2002. This declaration is also amended to include Liberty and Montgomery Counties in the State of Texas as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing through November 15, 2002.

In addition, applications for economic injury loans from small businesses located in Grimes, San Jacinto and Walker Counties in the State of Texas may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 6, 2003, and for economic injury the deadline is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 19, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–29911 Filed 11–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3465]

State of West Virginia

Jackson County and the contiguous counties of Kanawha, Mason, Putnam, Roane, Wirt and Wood in the State of West Virginia; and Meigs County in the State of Ohio constitute a disaster area as a result of a series of strong storms that occurred on November 10, 2002. Applications for loans for physical damage may be filed until the close of business on January 17, 2003, and for economic injury until the close of business on August 18, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere:	5.875
Homeowners Without Credit Available Elsewhere:	2.937
Businesses With Credit Available Elsewhere:	6.648
Businesses and Non-profit Organizations Without Credit Available Elsewhere:	3.324
Others (Including Non-profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere:	3.324

The number assigned to this disaster for physical damage is 346511for West Virginia and 346611 for Ohio. The number assigned to this disaster for economic injury is 9S6100 for West Virginia and 9S6200 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 18, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–29912 Filed 11–22–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–06–C–00–MSP To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minneapolis-St. Paul International Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 26, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeffrey W. Hamiel, Executive Director of the Metropolitan Airports Commission at the following address: Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Airports Commission under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon Nelson, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706, telephone (612) 713–4358. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minneapolis-St. Paul International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158). On October 28, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Airports Commission was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 25, 2003.

The following is a brief overview of the application.

Proposed charge effective date: April 1, 2003.

Proposed charge expiration date: October 1, 2017.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $94,832,543.

Brief description of proposed projects: (Impose and Use Projects) Runway 12R/30L temporary extension; runway 4/22 property acquisition; airside bituminous construction—2001; pavement rehabilitation—apron/taxiway;

miscellaneous airfield construction; taxiway A/H reconstruction; Green/Gold connector bag belt; Green/Gold connector ticket counter/bag check; security fence/gate replacements; maintenance facility addition.

(Impose Only Project) Concourse F expansion.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $1,121,378,685.

Brief description of proposed projects: (Impose and Use Projects) Runway 12L deicing pad; runway 12R deicing pad; buildings demolition; taxiway B construction; runway 17/35 site preparation and utility installation (including wetland mitigation, concrete paving, storm sewer and storm water pond construction); runway 17/35 site demolition (on and off airport); runway 17/35 runways, taxiways, taxilanes, and connectors (including runway 17 deicing pad); runway 17/35 airfield service road; runways 17/35 and 4/22 tunnels; taxiway W–Y/Y–3 tunnels; tenant lease extinguishment; deicing agent processing facility; airfield material and equipment storage facilities; property acquisition (for runway 17/35); program planning/management costs; residential noise insulation; Green concourse (Concourse C) expansion (Phases 1 and 2); Green Concourse apron expansion (including runway 30R deicing pad); Green/Gold connector; Green Concourse automated people mover; Humphrey terminal hydrant fueling system.

(Impose Only Project) fire/rescue replacement facility. Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Airports Commission.

Issued in Des Plaines, Illinois, on November 1, 2002.

Robert Benko,

Acting Manager, Airports Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 02–29901 Filed 11–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–868–89]

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, INTL–868–89–89 (TD 8353), Information With Respect to Certain Foreign-Owned Corporations (§§ 1.6038A–2 and 1.6038A–3).

DATES: Written comments should be received on or before January 24, 2003 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: Information With Respect to Certain Foreign-Owned Corporations.

OMB Number: 1545–1191.

Regulation Project Number: INTL–868–89 (Final).

Abstract: The regulation requires record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements allow IRS international examiners to better audit the tax returns of corporations engaged in crossborder transactions with a related party.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 63,000.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 630,000 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: November 19, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–29918 Filed 11–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting.

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the

overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements. A summary of the agenda along with the planned discussion topics is listed below.

Summarized Agenda

9 a.m. Meeting Opens
11:30 Break for Lunch
1:30 Meeting Adjourns

The planned discussion topics are as follows:

(1) Electronic Tax Administration and E-Z Tax-Filing Overview
(2) Plans for the 2003 Filing Season
(3) Path to 2007
(4) Tax Exempt and Government Entities Operating Division Update

Note: Last minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a meeting of ETAAC on Wednesday, December 4, 2002. This meeting will be open to the public, and will be in a room that accommodates approximately 40 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis.

ADDRESSES: The meeting will be held in the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you or to receive general information about ETAAC contact Ms. Candice Cromling at (202) 283–0462 by November 29, 2002. Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Cromling in a voice-mail message please spell out all names.

A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Cromling on or after Wednesday, November 27 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service's (IRS's) strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns.

ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Dated: November 20, 2002.

Terence H. Lutes,

Director, Electronic Tax Administration.

[FR Doc. 02–29919 Filed 11–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted via teleconference.

DATES: The meeting will be held Thursday, December 12, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227 or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held, Thursday, December 12, 2002, from 3 p.m. to 5 p.m. eastern time via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227, or 414–297–1604 for dial-in information.

The agenda will include the following: outreach planning and discussion of E-file use by small businesses.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 13, 2002.

Cathy Vanhorn,

Director, Communication & Liasion.

[FR Doc. 02–29920 Filed 11–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Ad Hoc Committee

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Ad Hoc Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Ad Hoc Committee will be held Thursday, December 5, 2002, from 1 pm p.s.t. to 3 pm p.s.t. via a telephone conference call. The public is invited to make written comments. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174, or e-mail *cap_4@mindspring.com*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095, or e-mail *cap_4@mindspring.com*.

The agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: November 13, 2002.

Cathy Vanhorn,

Director, Communication and Liaison.

[FR Doc. 02–29921 Filed 11–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming)

ACTION: Notice.

SUMMARY: An open meeting of Area 6 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel will be held Monday, November 18, 2002, from 2 p.m. to 4 p.m. as a teleconference.

The public is invited to send written comments. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, 915 2nd Ave, MS W406, Seattle, WA 98174. Due to limited conference time, notification of intent to attend the meeting must be made with Anne Gruber or Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The Agenda will include the following: committee business, welcome to new members, and discussion of various ideas on hold from the summer.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: October 30, 2002.

John J. Mannion,

Director, Program Planning & Quality.

[FR Doc. 02–29922 Filed 11–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–14: OTS Nos. H–2029; H–3798 and 04195]

Wayne Savings Bankshares, MHC, Wooster, OH, and Wayne Savings Community Bank, Wooster, OH; Approval of Conversion Application

Notice is hereby given that on November 14, 2002, the Director, Supervision Policy, Office of Thrift Supervision (''OTS''), or her designee, acting pursuant to delegated authority, approved the application of Wayne Savings Bankshares, MHC, Wooster, Ohio (MHC), to convert to the stock form of organization. The MHC is the parent mutual holding company of Wayne Savings Community Bank, Wooster, Ohio (Savings Association). Following the proposed conversion, the Savings Association will be a wholly owned stock subsidiary of Wayne Savings Bancshares, Inc., Wooster, Ohio (Holding Company). Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 19, 2002.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–29802 Filed 11–22–02; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register

Vol. 67, No. 227

Monday, November 25, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12388–000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

November 8, 2002.

Correction

In notice document 02–29142 beginning on page 69523 in the issue of Monday, November 18, 2002, make the following correction:

On page 69523, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C2–29142 Filed 11–22–02; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH05

List of Approved Spent Fuel Storage Casks: VSC–24 Revision

Correction

In rule document 02–29485 beginning on page 69987 in the issue of Wednesday, November 20, 2002 make the following correction:

On page 69987, in the first column, under **DATES**, in the second line ''February 3, 2002'' should read, ''February 3, 2003''.

[FR Doc. C2–29485 Filed 11–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–31–AD; Amendment 39–12950; AD 2002–23–06]

RIN 2120–AA64

Airworthiness Directive; Textron Lycoming AEIO–540, IO–540, LTIO–540, O–540, and TIO–540 Series Reciprocating Engines

Correction

In rule document 02–29003 beginning on page 68932 in the issue of Thursday, November 14, 2002, make the following correction:

§39.13 [Corrected]

On page 68933, in the third column, in § 39.13, after amendatory instruction 2., the item directly beneath should appear as follows: ''• **2002–23–06 Textron Lycoming:**''.

[FR Doc. C2–29003 Filed 11–22–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–11]

Amendment to Class E Airspace; Ulysses, KS

Correction

In rule document 02–28831 beginning on page 68757 in the issue of Wednesday, November 13, 2002, make the following correction:

§71.1 [Corrected]

On page 68758, in the second column, in §71.1, under the heading **ACE KS E5 Ulysses, KS [Revised]**, in the first paragraph, in the first line, ''upward toward'' should read, ''upward''.

[FR Doc. C2–28831 Filed 11–22–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
November 25, 2002

Part II

Environmental Protection Agency

40 CFR Part 62

Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–7408–1]

RIN 2060–AJ28

Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 1, 2000, EPA adopted emission guidelines for existing commercial and industrial solid waste incineration (CISWI) units. Sections 111 and 129 of the Clean Air Act (CAA) require States with existing CISWI units subject to the emission guidelines to submit plans to EPA that implement and enforce the emission guidelines. Indian Tribes may submit, but are not required to submit, Tribal plans to implement and enforce the emission guidelines in Indian country. State plans are due from States with CISWI units subject to the emission guidelines on December 1, 2001. If a State or Tribe with existing CISWI units does not submit an approvable plan, sections 111(d) and 129 of the CAA require EPA to develop, implement, and enforce a Federal plan for CISWI units located in that State or Tribal area within 2 years after promulgation of the emission guidelines (December 1, 2002). This action proposes a Federal plan to implement emission guidelines for CISWI units located in States and Indian country without effective State or Tribal plans. On the effective date of an approved State or Tribal plan, the Federal plan would no longer apply to CISWI units covered by the State or Tribal plan.

DATES: *Comments.* Comments on the proposed CISWI Federal plan must be received on or before January 24, 2003.

Public hearing. The EPA will hold a public hearing if requests to speak are received by December 10, 2002. For additional information on the public hearing and requesting to speak, see the Supplementary Information section of this preamble. If requested, the hearing would take place on December 30, 2002 and would begin at 10 a.m.

ADDRESSES: *Comments.* Submit written comments (in duplicate, if possible) to the following address: Air and Radiation Docket and Information Center (MC–6102T) , U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, Attention Docket No. A–2000–52. The EPA requests that a separate copy also be sent to the contact person listed below. For additional information on the docket and electronic availability, see Supplementary Information.

Public hearing. If timely requests to speak at a public hearing are received, a public hearing will be held at EPA's New RTP Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC. Were one to be held, a hearing would be held in the auditorium of the main facility.

FOR FURTHER INFORMATION CONTACT: For information concerning specific aspects of this proposal, contact Mr. David Painter at (919) 541–5515, Program Implementation and Review Group, Information Transfer and Program Integration Division (E143–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, email: painter.david@epa.gov. For technical information, contact Mr. Fred Porter at (919) 541–5251, Combustion Group, Emission Standards Division (C439–01), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, email: porter.fred@epa.gov. For information regarding implementation of this proposed rule, contact the appropriate Regional Office (table 1) as shown in Supplementary Information.

SUPPLEMENTARY INFORMATION: *Comment Information.* Comments may be submitted electronically via electronic mail (e-mail) or on disk. Electronic comments on this proposed rule may be filed via e-mail at most Federal Depository Libraries. E-mail submittals should be sent to: ''*A-and-R-Docket@epa.gov*''. Electronic comments must be submitted as an American Standard Code for Information Interchange (ASCII) file avoiding the use of special characters or encryption. Comments and data will also be accepted on disks or as an e-mail attachment in WordPerfect or Corel ''wpd'' file format, Microsoft Word format, or ASCII file format. All comments and data for this proposed rule, whether in paper form or electronic forms such as through e-mail or on diskette, must be identified by docket number A–2000–52.

Persons wishing to submit proprietary information for consideration must clearly distinguish such information from other comments by clearly labeling it ''Confidential Business Information'' (CBI). To ensure that proprietary information is not inadvertently placed in the docket, submit CBI directly to the following address, and not the public docket: Mr. Roberto Morales, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740B, Durham, North Carolina 27701. Information covered by such a claim of confidentiality will be disclosed by the EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality is made with the submission, the submission may be made available to the public without further notice. No confidential business information should be submitted through e-mail.

Public hearing information. Persons wishing to speak at a public hearing should notify Ms. Christine Adams at (919) 541–5590. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

Related information. Electronic versions of this notice, the proposed regulatory text, and other background information are available at the World Wide Web site that EPA has established for CISWI units. The address is *http://www.epa.gov/ttn/atw/129/ciwi/ciwipg.html.* The CISWI website references other websites for closely related rules, such as large and small municipal waste combustors (MWC), hazardous waste, and hospital/medical/infectious waste incinerators (HMIWI). The large MWC and HMIWI sites contain the respective State plan guidance documents.

Docket. Docket numbers A–2000–52 and A–94–63 contain the supporting information for this proposed rule and the supporting information for EPA's promulgation of emission guidelines for existing CISWI units, respectively. Docket A–2000–52 incorporates all of the information in Docket A–94–63. The dockets are organized and complete files of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The dockets are available for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, at the OAR Docket in the EPA Docket Center (EPA/DC), 1301 Constitution Avenue, NW., Washington, DC 20460, or by calling (202) 566–1744. The docket is located in Room B102, (basement of EPA West Building). The fax number for the Center is (202) 566–1749 and the E-mail address is *http://www.epa.gov/edocket.* A reasonable fee may be charged for copying.

Regulated entities. The proposed Federal plan would affect the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes:

Category	NAICS Code	SIC Code	Examples of potentially regulated entities
Any industry using a solid waste incinerator as defined in the regulations.	325	28	Manufacturers of chemicals and allied products.
	325	34	Manufacturers of electronic equipment.
	421	36	Manufacturers of wholesale trade, durable goods.
	321, 337	24, 25	Manufacturers of lumber and wood furniture.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA expects to be regulated by this proposed rule. This table lists examples of the types of entities that could be affected by this proposed rule. Other types of entities not listed could also be affected. To determine whether your facility, company, business organization, etc., is regulated by this action, carefully examine the applicability criteria in 40 CFR 62.14510 through 62.14530 of subpart III. If you have any questions regarding the applicability of this action to your solid waste incineration unit, refer to the **FOR FURTHER INFORMATION CONTACT** section.

EPA Regional Office Contacts. Table 1 lists EPA Regional Offices that can answer questions regarding implementation of this proposed rule.

TABLE 1.—EPA REGIONAL CONTACTS FOR CISWI

Region	Contact	Phone/Fax	States and Protectorates
I	EPA New England Director, Air Compliance Program, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023.	617–918–1650, 617–918–1505 (fax).	CT, ME, MA, NH, RI, VT
II	U.S. EPA—Region 2, Air Compliance Branch, 290 Broadway, New York, New York 10007.	212–637–4080, 212–637–3998 (fax).	NJ, NY, Puerto Rico, Virgin Islands
III	U.S. EPA—Region 3, Chief, Air Enforcement Branch (3AP12), 1650 Arch Street, Philadelphia, PA 19103–2029.	215–814–3438, 215–814–2134 (fax).	DE, DC, MD, PA, VA, WV
IV	U.S. EPA—Region 4, Air and Radiation, Technology Branch, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303–3104.	404–562–9105, 404–562–9095 (fax).	AL, FL, GA, KY, MS, NC, SC, TN
V	U.S. EPA—Region 5, Air Enforcement and Compliance Assurance Branch, (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604–3590.	312–353–2211, 312–886–8289 (fax).	IL, IN, MN, OH, WI
VI	U.S. EPA—Region 6, Chief, Toxics Enforcement, Section (6EN–AT), 1445 Ross Avenue, Dallas, TX 75202–2733.	214–665–7224, 214–665–7446 (fax).	AR, LA, NM, OK, TX
VII	U.S. EPA—Region 7, 901 N. 5th Street, Kansas City, KS 66101	913–551–7020, 913–551–7844 (fax).	IA, KS, MO, NE
VIII	U.S. EPA—Region 8, Air Program Technical Unit, (Mail Code 8P–AR), 999 18th Street Suite 500, Denver, CO 80202.	303–312–6007, 303–312–6064 (fax).	CO, MT, ND, SD, UT, WY
IX	U.S. EPA—Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.	415–744–1219, 415–744–1076 (fax).	AZ, CA, HI, NV, American Samoa, Guam
X	U.S. EPA—Region 10, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.	(206) 553–4273, (206) 553–0110 (fax).	

Organization of this document. The following outline is provided to aid in locating information in this preamble.

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I. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA)
J. Paperwork Reduction Act
K. National Technology Transfer and Advancement Act

I. Background Information

A. What Is the Regulatory Development Background for This Proposed Rule?

Section 129 of the CAA requires EPA to develop emission guidelines for existing ''solid waste incineration units combusting commercial or industrial waste.'' The EPA refers to these units as ''commercial and industrial solid waste incineration'' (CISWI) units. The EPA proposed emission guidelines for CISWI units on November 30, 1999 and promulgated them on December 1, 2000 (65 FR 75338) (to be codified at 40 CFR part 60, subpart DDDD). In writing Section 129 of the Clean Air Act, Congress looked first to the States as the preferred implementers of emission guidelines for existing CISWI units. To make these emission guidelines enforceable, States with existing CISWI units must have submitted to EPA within one year following promulgation of the emission guidelines (by December 1, 2001) State plans that implement and enforce the emission guidelines. For States or Tribes that do not have an EPA-approved and effective plan, EPA must develop and implement a Federal plan within two years following promulgation of the emission guidelines (by December 1, 2002). The EPA sees the Federal plan as an interim measure to ensure that Congressionally mandated emission standards are implemented until States assume their role as the preferred implementers of the emissions guidelines. Thus, the EPA encourages States to either use the Federal plan as a template to reduce the effort needed to develop their own plans or to simply take delegation to directly implement and enforce the guidelines. States without any existing CISWI units are required to submit to the Administrator a letter of negative declaration certifying that there are no CISWI units in the State. No plan is required for States that do not have any CISWI units.

As discussed in section VI.E of this preamble, Indian Tribes may, but are not required to, submit Tribal plans to cover CISWI units in Indian country. A Tribe may submit to the Administrator a letter of negative declaration certifying that no CISWI units are located in the Tribal area. No plan is required for Tribes that do not have any CISWI units. CISWI units located in States or Tribal areas that mistakenly submit a letter of negative declaration would be subject to the Federal plan until a State or Tribal plan has been approved and becomes effective covering those CISWI units.

Today's action proposes a Federal plan for CISWI units that are not covered by an approved State or Tribal plan as of December 1, 2002. Sections 111 and 129 of the CAA and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan to cover existing CISWI units located in States that do not have an approved plan within two years after promulgation of the emission guidelines (by December 1, 2002 for CISWI units). The EPA is proposing this Federal plan now so that a promulgated Federal plan will be in place at the earliest possible date, thus ensuring timely implementation and enforcement of the CISWI emission guidelines. In addition, EPA's timing allows a State or Tribe the opportunity to take delegation of the Federal plan in lieu of writing a State plan.

B. What Impact Does the U.S. Appeals Court Remand and EPA's Granting of a Request for Reconsideration Have on This Federal Plan?

Subsequent to EPA's promulgation of the final rule establishing the NSPS and EG for CISWI units, two events occurred that potentially could result in substantive changes to these standards. First, in August 2001 EPA granted a request for reconsideration, pursuant to section 307(d)(7)(B) of the CAA, submitted on behalf of the National Wildlife Federation and the Louisiana Environmental Action Network, related to the definition of ''commercial and industrial solid waste incineration unit'' in EPA's CISWI rulemaking. In granting this petition for reconsideration, EPA agreed to undertake further notice and comment proceedings related to this definition. Second, on January 30, 2001, the Sierra Club filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging EPA's final CISWI rule. On Sept. 6, 2001, the Court entered an order granting EPA's motion for a voluntary remand of the CISWI rule without vacature. EPA's request for a voluntary remand of the final CISWI rule was intended to allow the Agency to address concerns related to the Agency's procedures for establishing MACT floors for CISWI units in light of the D.C. Circuit Court's decision in *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855 (D.C. Cir. 2001).

Neither EPA's granting of the petition for reconsideration, nor the Court's order granting a voluntary remand, stay, vacate or otherwise influence the effectiveness of the currently existing CISWI regulations. Specifically, section 307(d)(7)(B) of the Act provides that ''reconsideration shall not postpone the effectiveness of the rule,'' except that ''[t]he effectiveness of the rule may be stayed during such reconsideration * * * by the Administrator or the court for a period not to exceed three months.'' In this case, neither EPA nor the court stayed the effectiveness of the final CISWI regulations in connection with the reconsideration petition. Likewise, the D.C. Circuit granted EPA's motion for a remand without vacature, therefore, the Court's remand order had no impact on the effectiveness of the current CISWI regulations. Because the existing CISWI regulations remain in full effect, EPA's obligation under section 129(b)(3) of the Act to promulgate a Federal Plan (to implement those regulations for existing units that are not covered by an approved and effective State plan) remains unchanged.[1] Therefore, EPA is complying with its statutory obligations by issuing today's proposed Federal Plan for CISWI units.

To the extent that EPA might take action in the future that results in changes in the underlying CISWI rule—in response to the petition for reconsideration or in response to the voluntary remand—EPA will simultaneously amend this Federal Plan to reflect any such changes. If such changes become necessary, interested parties, including States and sources, will have the opportunity to provide comments, and EPA will reasonably accommodate the concerns of commenters as appropriate.

II. Affected Facilities

A. What Is a CISWI Unit?

A CISWI unit means any combustion device that combusts commercial and industrial waste, as defined in proposed 40 CFR part 62, subpart III. Commercial and industrial waste, as defined in proposed subpart III, is solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility. Fifteen types of combustion units, which are listed in § 62.14525 of subpart III are

[1] Similarly, the obligations of States and sources are unaffected by the reconsideration petition and the remand.

conditionally exempt from the Federal plan.

B. Does the Federal Plan Apply to Me?

The proposed Federal plan will apply to you if you are the owner or operator of a combustion device that combusts commercial and industrial waste (as defined in subpart III) and the device is not covered by an approved and effective State or Tribal plan as of December 1, 2002. The proposed Federal plan covers your CISWI unit until EPA approves a State or Tribal plan that covers your CISWI unit and that plan becomes effective.

If you began the construction of your CISWI unit on or before November 30, 1999, it is considered an existing CISWI unit and could be subject to the Federal plan. If you began the construction of your CISWI unit after November 30, 1999, it is considered a new CISWI unit and is subject to the NSPS. If you began reconstruction or modification of your CISWI unit prior to June 1, 2001, it is considered an existing CISWI unit and could be subject to the Federal plan. Likewise, if you began reconstruction or modification of your CISWI unit on or after June 1, 2001, it is considered a new CISWI unit and is subject to the NSPS.

Your CISWI unit would be subject to this Federal plan if on the effective date of the Federal plan, EPA has not approved a State or Tribal Plan that covers your unit, or the EPA-approved State or Tribal plan has not become effective. The specific applicability of this plan is described in §§ 62.14510 through 62.14530 of subpart III.

Once an approved State or Tribal plan is in effect, the Federal plan will no longer apply to a CISWI unit covered by such plan. An approved State or Tribal plan is a plan developed by a State or Tribe that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart DDDD. The State or Tribal plan is effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval of the plan.

The EPA's promulgation of a CISWI Federal plan will not preclude States or Tribes from submitting a plan. If a State or Tribe submits a plan after promulgation of the CISWI Federal plan final rule, EPA will review and approve or disapprove the State or Tribal plan. If EPA approves a plan, then the Federal plan would no longer apply to CISWI units covered by the State or Tribal plan as of the effective date of the State or Tribal plan. (See the discussion in ''State or Tribe Submits A Plan After CISWI Units Located in the Area Are Subject to the Federal Plan'' in section VI.C of this preamble.) If a CISWI unit were overlooked by a State or Tribe and the State or Tribe submitted a negative declaration letter, or if an individual CISWI unit were not covered by an approved and effective State or Tribal plan, the CISWI unit would be subject to this Federal plan.

C. How Do I Determine If My CISWI Unit Is Covered by an Approved and Effective State or Tribal Plan?

Part 62 of Title 40 of the Code of Federal Regulations identifies the approval and promulgation of section 111(d) and section 129 State or Tribal plans for designated facilities in each State or area of Indian Country. However, part 62 is updated only once per year. Thus, if part 62 does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office (Table 1) to determine if approval occurred since publication of the most recent version of part 62.

III. Elements of the CISWI Federal Plan

Because EPA is proposing a Federal plan to cover CISWI units located in States and areas of Indian Country where plans are not in effect, EPA has elected to include in this proposal the same elements as are required for State plans: (1) Identification of legal authority and mechanisms for implementation, (2) inventory of CISWI units, (3) emissions inventory, (4) emission limitations, (5) compliance schedules, (6) waste management plan, (7) testing, monitoring, inspection, reporting, and recordkeeping, (8) operator training and qualification, (9) public hearing, and (10) progress reporting. *See* 40 CFR part 60 subparts B and C and sections 111 and 129 of the CAA. Each plan element is described below as it relates to this proposed CISWI Federal plan. Table 2 lists each element and identifies where it is located or codified.

TABLE 2.—ELEMENTS OF THE CISWI FEDERAL PLAN

Element of the CISWI Federal plan	Location
Legal authority and enforcement mechanism.	Sections 129(b)(3) 111(d), 301(a), and 301(d)(4) of the CAA
Inventory of Affected MWC Units.	Docket A–2000–52
Inventory of Emissions.	Docket A–2000–52
Emission Limits.	40 CFR 62.14630–62.14645
Compliance Schedules.	40 CFR 62.14535–62.14575
Operator Training and Qualification.	40 CFR 62.14595–62.14625
Waste Management Plan.	40 CFR 62.14580–62.14590
Record of Public Hearings.	Docket A–2000–52
Testing, Monitoring, Recordkeeping, and Reporting.	40 CFR 62.14670–62.14760
Progress Reports.	Section III.J of this preamble

A. Legal Authority and Enforcement Mechanism

1. EPA's Legal Authority in States

Section 301(a) of the CAA provides EPA with broad authority to write regulations that carry out the functions of the CAA. Sections 111(d) and 129(b)(3) of the CAA direct EPA to develop a Federal plan for States that do not submit approvable State plans. Sections 111 and 129 of the CAA provide EPA with the authority to implement and enforce the Federal plan in cases where the State fails to submit a satisfactory State plan. Section 129(b)(3) requires EPA to develop, implement, and enforce a Federal plan within 2 years after the date the relevant emission guidelines are promulgated (by December 1, 2002 for CISWI units). Compliance with the emission guidelines cannot be later than 5 years after the relevant emission guidelines are promulgated (by December 1, 2005 for CISWI units).

2. EPA's Legal Authority in Indian Country

Section 301 provides EPA with the authority to administer Federal programs in Indian country. *See* sections 301 (a) and (d). Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA where Tribal implementation of those provisions is not appropriate or administratively not feasible. See section VI.E of this preamble for a more detailed discussion of EPA's authority to administer the CISWI Federal plan in Indian country.

The EPA is proposing this Federal regulation under the legal authority of

the CAA to implement the emission guidelines in those States and areas of Indian country not covered by an approved plan. As discussed in section VI of this document, implementation and enforcement of the Federal plan may be delegated to eligible Tribal, State, or local agencies when requested by a State, eligible Tribal, or local agency, and when EPA determines that such delegation is appropriate.

B. Inventory of Affected CISWI Units

The proposed Federal plan includes an inventory of CISWI units affected by the emission guidelines. (See 40 CFR 60.25(a).) Docket number A–2000–52 contains an inventory of the CISWI units that may potentially be covered by this proposed Federal plan in the absence of State or Tribal plans. This inventory contains 99 CISWI units in 30 States and one protectorate. It is based on information collected from State and Federal databases, information collection request survey responses, and stakeholder meetings during the development of the CISWI emission guidelines. The EPA recognizes that this list may not be complete. Therefore, sources potentially subject to this Federal plan may include, but are not limited to, the CISWI units listed in the inventory memorandum in docket number A–2000–52. Any CISWI unit that meets the applicability criteria in the Federal plan rule is subject to the Federal plan, regardless of whether it is listed in the inventory. States, Tribes, or individuals are invited to identify additional sources for inclusion to the list during the comment period for this proposal.

C. Inventory of Emissions

The proposed Federal plan includes an emissions estimate for CISWI units subject to the emission guidelines. (See 40 CFR 60.25(a).) The pollutants to be inventoried are dioxins/furans, cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), hydrogen chloride (HCl), oxides of nitrogen (NO_X), carbon monoxide (CO), and sulfur dioxide (SO_2). For this proposal, EPA has estimated the emissions from each known CISWI unit that potentially may be covered by the Federal plan for the nine pollutants regulated by the Federal plan.

The emissions inventory is based on available information about the CISWI units, emission factors, and typical emission rates developed for calculating nationwide air impacts of the CISWI emission guidelines and the Federal plan. Refer to the inventory memorandum in docket number A–2000–52 for the complete emissions inventory and details on the emissions calculations.

D. Emission Limitations

The proposed Federal plan includes emission limitations. (See 40 CFR 60.24(a).) Section 129(b)(2) of the CAA requires these emission limitations to be ''at least as protective as'' those in the emission guidelines. The emission limitations in this proposed CISWI Federal plan are the same as those contained in the emission guidelines. (See table 2 of subpart III.) Section IV of this preamble discusses the emission limitations and operating limits. Table 3 of subpart III contains operating limits for wet scrubbers.

E. Compliance Schedules

Increments of progress are required for CISWI units that need more than 1 year from State plan approval to comply, or in the case of the Federal plan, more than 1 year after promulgation of the final Federal plan. (See 40 CFR 60.24(e)(1).) Increments of progress are included to ensure that each CISWI unit needing more time to comply is making progress toward meeting the emission limits.

For CISWI units that need more than 1 year to comply, the proposed CISWI Federal plan includes in its compliance schedule two increments of progress from 40 CFR 60.21(h), as allowed by 40 CFR 60.24(e)(1) and required by 40 CFR part 60, subpart DDDD (§ 60.2575). The Federal plan includes defined and enforceable dates for completion of each increment. These increments of progress are (1) submit final control plan, and (2) achieve final compliance. The proposed increments of progress are described in section IV.E of this preamble.

F. Waste Management Plan Requirements

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste. The waste management plan must be submitted no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**. Sections 62.14580 through 62.14590 of subpart III contain the waste management plan requirements.

G. Testing, Monitoring, Recordkeeping, and Reporting

The proposed Federal plan includes testing, monitoring, recordkeeping, and reporting requirements. (See 40 CFR 60.25.) Testing, monitoring, recordkeeping, and reporting requirements are consistent with subpart DDDD, and assure initial and ongoing compliance.

H. Operator Training and Qualification Requirements

The owner or operator must qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course. Sections 62.14595 through 62.14625 of the proposed subpart III contain the operator training and qualification requirements.

I. Record of Public Hearings

The proposed Federal plan provides opportunity for public participation in adopting the plan. (*See* 40 CFR 60.23(c).) If requested to do so, EPA will hold a public hearing in Research Triangle Park, NC. A record of the public hearing, if any, will appear in Docket A–2000–52. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information submitted during the public comment period will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held.

J. Progress Reports

Under the Federal plan, the EPA Regional Offices will prepare annual progress reports to show progress of CISWI units in the Region toward implementation of the emission guidelines. (*See* 40 CFR 60.25(e).) States or Tribes that have been delegated the authority to implement and enforce this Federal plan would also be required to submit annual progress reports to the appropriate EPA Regional Office.

Appendix D of 40 CFR part 60 requires reporting of emissions data to the Aerometric Emissions Information Retrieval System (AIRS)/AIRS Facility Subsystem(AFS). These reports can be combined with the State implementation plan report required by 40 CFR 51.321 in order to avoid double reporting. Under the proposed Federal plan, EPA Regional Offices would report AIRS emissions data. If a State or Tribe has been delegated the authority to implement and enforce the Federal plan, the State or Tribe would report emissions data to AIRS.

Each progress report must include the following items: (1) Status of enforcement actions; (2) status of increments of progress; (3) identification

of sources that have shut down or started operation; (4) emission inventory data for sources that were not in operation at the time of plan development, but that began operation during the reporting period; (5) additional data as necessary to update previously submitted source and emission information; and (6) copies of technical reports on any performance testing and monitoring.

IV. Summary of CISWI Federal Plan

A. What Emission Limitations Must I Meet?

As the owner or operator of an existing CISWI unit, you will be required to meet the emission limitations specified in Table 1. See section IV.E of this preamble for a discussion of the compliance schedule.

TABLE 1.—EMISSION LIMITATIONS FOR EXISTING CISWI UNITS

For these pollutants	You must meet these emission limitations [a]	And determine compliance using these methods [b]
Cadmium	0.004 mg/dscm	EPA Method 29
Carbon Monoxide	157 ppm	EPA Methods 10, 10A, or 10B
Dioxins/Furans, toxic equivalent (TEQ) basis.	0.41 ng/dscm	EPA Method 23
Hydrogen Chloride	62 ppm by dry volume	EPA Method 26A
Lead	0.04 mg/dscm	EPA Method 29
Mercury	0.47 mg/dscm	EPA Method 29
Opacity	10 percent	EPA Method 9
Oxides of Nitrogen	388 ppm by dry volume	EPA Method 7, 7A, 7C, 7D, or 7E
Particulate Matter	70 mg/dscm	EPA Method 5 or 29
Sulfur Dioxide	20 ppm by dry volume	EPA Method 6 or 6c

[a] All emission limitations (except opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] These methods are in 40 CFR part 60, appendix A.

B. What Operating Limits Must I Meet?

If you are using a wet scrubber to comply with the emission limitations, you will be required to establish the maximum and minimum site-specific operating limits indicated in Table 2. You will be required to operate the CISWI unit and wet scrubber so that the operating parameters do not deviate from the established operating limits.

TABLE 2.—OPERATING LIMITS FOR EXISTING CISWI UNITS USING WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor continuously using these recording times
Charge rate	Maximum charge rate	Every hour
Pressure drop across the wet scrubber, or amperage to the wet scrubber.	Minimum pressure drop or amperage	Every 15 minutes
Scrubber liquor flow rate	Minimum flow rate	Every 15 minutes
For these operating parameters.	You must establish these operating limits.	And monitor continuously using these recording times
Scrubber liquor pH	Minimum pH	Every 15 minutes

NOTE: Compliance is determined on a 3-hour rolling average basis, except charge rate for batch incinerators, which is determined on a daily basis.

If you are using an air pollution control device other than a wet scrubber to comply with the emission limitations, you will be required to petition the Administrator for other site-specific operating limits to be established during the initial performance test and continuously monitored thereafter. The required components of the petition are described in § 62.14640 of subpart III.

If you are using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, you must operate the fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period.

C. What Are the Requirements for Air Curtain Incinerators?

The Federal plan will establish opacity limitations for air curtain CISWI units burning 100 percent wood wastes and/or clean lumber. This opacity limitation will be 10 percent, except 35 percent opacity will be allowed during start-up periods that are within the first 30 minutes of operation.

D. What Are the Testing, Monitoring, Inspection, Recordkeeping, and Reporting Requirements?

The owner or operator of a CISWI unit subject to the CISWI Federal plan will be required to conduct initial performance tests for cadmium, dioxins/furans, hydrogen chloride, lead, mercury, opacity, particulate matter, and sulfur dioxide and establish operating limits (i.e., maximum or minimum values for operating parameters). The initial performance test must be conducted within 180 days after the date the facility is required to achieve final compliance.

The owner or operator will be required to conduct annual performance tests for particulate matter, hydrogen chloride, and opacity. (An owner or operator may conduct less frequent testing if the facility demonstrates that it is in compliance with the emission limitations for 3 consecutive years.)

To assure ongoing achievement of the Federal plan's provisions, an owner or operator using a wet scrubber to comply with the emission limitations will continuously monitor the following

operating parameters: charge rate, pressure drop across the wet scrubber (or amperage), and scrubber liquid flow rate and pH. If something other than a wet scrubber is used to comply with the emission limitations, the owner or operator will be required to monitor other operating parameters, as approved by the Administrator.

If the owner or operator is using a fabric filter to comply with the emission limitations, in addition to other operating limits as approved by the Administrator, the owner or operator must install and continuously operate a bag leak detection system. The owner or operator must keep records of periods when the alarm sounds and calculate whether these periods are more than 5 percent of the operating time for each 6-month period. The owner or operator will be required to submit information documenting compliance with these requirements as part of an annual report; and report deviations semi-annually.

In addition, the Federal plan will require CISWI unit owners and operators to maintain for 5 years records of the initial performance tests and all subsequent performance tests, operating parameters, any maintenance, and operator training and qualification. The owner or operator will submit the results of the initial performance tests and all subsequent performance tests and values for the operating parameters in annual reports.

E. What Is the Compliance Schedule?

Each CISWI unit will be required to either: (1) Reach final compliance by the date 1 year after publication of the final rule in the **Federal Register**, or (2) meet increments of progress and reach final compliance by the date 2 years after publication of the final rule in the **Federal Register**. In addition, the owner or operator must comply with the operator training and qualification requirements and inspection requirements by the date 1 year after publication of the final rule in the **Federal Register**, regardless of when the CISWI unit reaches final compliance.

Each owner or operator that takes more than 1 year to reach final compliance must submit a final control plan (increment 1) by the date 6 months after publication of the final rule for this Federal plan in the **Federal Register** and reach final compliance (increment 2) by the date 2 years after publication of the final rule in the **Federal Register**. To ensure timely progress towards implementation of the Federal plan, the proposed rules include a requirement for owners or operators of CISWI units seeking to take an additional year to reach final compliance to submit a request to the Administrator that documents the need for an extension.

To meet the increment 1 requirement, the owner or operator of each CISWI unit must submit a final control plan that includes five items: (1) A description of the air pollution control devices and/or process changes that will be employed so that each CISWI unit complies with the emission limits and other requirements, (2) a list of the types of waste burned, (3) the maximum design waste burning capacity, (4) the anticipated maximum charge rate, and, (5) if applicable, the petition for site-specific operating limits. A final control plan is not required for units that will be shut down, but those units must close by 1 year after the final rule is published or must submit a closure agreement by 6 months after the final rule is published, close no later than 2 years after the rule is published, and meet other requirements as described in section V.A. of this preamble.

To meet the second increment of progress, the owner or operator of each CISWI unit must incorporate all process changes or complete retrofit construction in accordance with the final control plan. The owner or operator must connect the air pollution control equipment or process changes such that when the CISWI unit is brought on line all necessary process changes or air pollution control equipment will operate as designed.

F. How Did EPA Determine the Compliance Schedule?

The EPA determined the compliance schedule based on the requirements of 40 CFR part 60, subpart B and the feasibility of owners or operators to retrofit combustion units with air pollution control devices. CISWI units must comply within 1 year after publication of the final Federal plan or meet increments of progress. The requirement to reach final compliance within 1 year is consistent with 40 CFR 60.24(c) of subpart B. Subpart B requires final compliance to be ''as expeditiously as practicable* * *'' and requires increments of progress if the compliance schedule is longer than 1 year.

The EPA believes that many CISWI units can reach final compliance within 1 year after promulgation of the Federal plan based on their similarity to HMIWI units. In addition to the 1 year after promulgation of the Federal plan, units could use the time between this proposed rule and promulgation of the final Federal plan to plan and begin retrofits.

The proposed compliance schedule for CISWI units is similar to the compliance schedule for HMIWI units. Most CISWI units are similar in size to HMIWI units. In addition, CISWI units would require similar controls to meet the CISWI Federal plan emission limits as HMIWI units would need to meet the HMIWI Federal plan emission limits. To determine the compliance schedule for HMIWI units, EPA conducted case studies of eight HMIWI units that completed retrofits of the types of controls needed to meet the HMIWI Federal plan (64 FR 36430, July 6, 1999). Based on these case studies (Docket No. A–98–24, II–A–1), EPA found that many HMIWI units can meet the requirements of the Federal plan within 1 year. Similarly, many CISWI units could meet a 1-year schedule.

We expect that some CISWI units could need more than 1 year to comply, as did some HMIWI units, due to site-specific circumstances. For units that cannot comply within 1 year, the proposed Federal plan establishes increments of progress, as required by subpart B. The proposed date for the first increment of progress, submittal of a final control plan, is 6 months after publication of the final Federal plan in the **Federal Register**. The proposed date for the second increment of progress, final compliance, is 2 years after publication of the final Federal plan in the **Federal Register**. These increments are derived from the findings of the case studies performed to characterize the retrofit of control systems for hospital medical and infectious waste (HMIWI) incinerators (Docket A–98–24, Item II–A–1). The size and design of CISWI are similar to the smaller HMIWI that were the subjects of the case studies. In particular, most units are small and controls will be ordered ''off-the-shelf'' as assembled packages. Thus, the Agency did not see a need for increments to address details of on-site construction and installation of control systems. Also, CISWI sites are not thought to have the problems with space and access that were concerns for HMIWI retrofits. In addition, CISWI units have the time between publication of this proposed rule and publication of the final rule in the **Federal Register** to begin developing the final control plan and to initiate retrofit activities.

The proposed rules do not include increments of progress for air curtain incinerators (ACI). Air curtain incinerators must comply with the requirements of the Federal plan one year after the date of promulgation of the final rule. Delaying implementation for ACI would not be appropriate because there will be little or no need for the installation of control equipment on these units(Primarily because control

equipment is typically infeasible for ACI). Compliance with the opacity limits applicable to this class of units would primarily be achieved by good operation and maintenance practices. This approach is consistent with the proposed requirement for completion of CISWI operator training by the date one year after promulgation of the final rule.

V. CISWI That Have or Will Shut Down

A. Units That Plan To Close Rather Than Comply

If you plan to permanently close your currently operating CISWI unit, you must do one of the following: (a) close by the date 1 year after publication of the final rule for this Federal plan in the **Federal Register**, or (b) submit a legally binding closure agreement, including the date of closure, to the Administrator by the date 6 months after publication of the final rule in the **Federal Register**. The closure agreement must specify the date by which operation will cease. The closure date cannot be later than the final compliance date of the CISWI Federal plan (2 years after publication of the final rule in the **Federal Register**). If you close your CISWI unit after the date 1 year after publication of the final rule in the **Federal Register**, but before the date 2 years after publication of the final rule in the **Federal Register**, then you must comply with the operator training and qualification requirements by the date 1 year after publication of the final rule in the **Federal Register**. In addition, while still in operation, you are subject to the same requirements for title V operating permits that apply to units that will not shut down.

B. Inoperable Units

In cases where a CISWI unit has already shut down, has been rendered inoperable, and does not intend to restart, the CISWI unit may be left off the source inventory in a State, Tribal, or this Federal plan. A CISWI unit that has been rendered inoperable would not be covered by the Federal plan. The CISWI owner or operator may do the following to render a CISWI unit inoperable: (1) Weld the waste charge door shut, (2) remove stack (and by-pass stack, if applicable), (3) remove combustion air blowers, or (4) remove burners or fuel supply appurtenances.

C. CISWI Units That Have Shut Down

CISWI units that are known to have already shut down (but are not known to be inoperable) will be included in the source inventory and identified in any State or Tribal plan submitted to EPA.

1. Restarting Before The Final Compliance Date

If the owner or operator of an inactive CISWI unit plans to restart before the final compliance date, the owner or operator must submit a control plan for the CISWI unit and meet the applicable compliance schedule. Final compliance is required for all pollutants and all CISWI units no later than the final compliance date. (See section IV.E for the discussion on compliance schedules and increments of progress.)

2. Restarting After The Final Compliance Date

Under this proposed Federal plan, a control plan would not be needed for inactive CISWI units that restart after the final compliance date. However, before restarting, such CISWI units would have to complete the operator training and qualification requirements and inspection requirements (if applicable) and complete retrofit or process modifications. Performance testing to demonstrate compliance would be required within 180 days after restarting. There would be no need to show that the increments of progress have been met since these steps would have occurred before restart while the CISWI unit was shut down and not generating emissions. A CISWI unit that operates out of compliance after the final compliance date would be in violation of the Federal plan and subject to enforcement action.

VI. Implementation of the Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129(b) of the CAA, EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. These emission guidelines are not enforceable until EPA approves a State or Tribal plan or adopts a Federal plan that implements and enforces them, and the State, Tribal, or Federal plan has become effective. As discussed above, the Federal plan regulates CISWI units in a State or Tribal area that does not have an EPA-approved plan currently in effect.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. *See* section 101(a)(3) of the CAA. Consistent with that overall determination, Congress established sections 111 and 129 of the CAA with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Also, in section 111(d) of the CAA, Congress explicitly required that EPA establish procedures that are similar to those under section 110(c) for State Implementation Plans. Although Congress required EPA to propose and promulgate a Federal plan for States that fail to submit approvable State plans on time, States and Tribes may submit approvable plans after promulgation of the CISWI Federal plan. The EPA strongly encourages States that are unable to submit approvable plans to request delegation of the Federal plan so that they can have primary responsibility for implementing the emission guidelines, consistent with Congress' intent.

Approved and effective State plans or delegation of the Federal plan is EPA's preferred outcome since EPA believes that State and local agencies not only have the responsibility to carry out the emission guidelines, but also have the practical knowledge and enforcement resources critical to achieving the highest rate of compliance. For these reasons, EPA will do all that it can to expedite delegation of the Federal plan to State and local agencies, whenever possible.

The EPA also believes that Indian Tribes should be the primary parties responsible for regulating air quality within Indian country, if they desire to do so. See EPA's Indian Policy (''Policy for Administration of Environmental Programs on Indian Reservations,'' signed by William D. Ruckelshaus, Administrator of EPA, dated November 4, 1984), reaffirmed in a 2001 memorandum (''EPA Indian Policy,'' signed by Christine Todd Whitman, Administrator of EPA, dated July 11,2001).

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian Tribe intends to take delegation of the Federal plan, the State or Indian Tribe must submit to the appropriate EPA Regional Office a written request for delegation of authority. The State or Indian Tribe must explain how it meets the criteria for delegation. *See generally* ''Good Practices Manual for Delegation of NSPS and NESHAP'' (EPA, February 1983). In order to obtain delegation, an Indian Tribe must also establish its eligibility to be treated in the same manner as a State (see section IV.E.1 of this preamble). The letter requesting delegation of authority to implement the Federal plan must demonstrate that the State or Tribe has adequate resources, as well as the legal and enforcement authority to administer and enforce the program. A memorandum of agreement

between the State or Tribe and EPA would set forth the terms and conditions of the delegation, the effective date of the agreement, and would also serve as the mechanism to transfer authority. Upon signature of the agreement, the appropriate EPA Regional Office would publish an approval notice in the **Federal Register**, thereby incorporating the delegation authority into the appropriate subpart of 40 CFR part 62.

If authority is not delegated to a State or Indian Tribe, EPA will implement the Federal plan. Also, if a State or Tribe fails to properly implement a delegated portion of the Federal plan, EPA will assume direct implementation and enforcement of that portion. The EPA will continue to hold enforcement authority along with the State or Tribe even when a State or Tribe has received delegation of the Federal plan. In all cases where the Federal plan is delegated, EPA will retain and will not transfer authority to a State or Tribe to approve the following items:

(1) Alternative site-specific operating parameters established by facilities using CISWI controls other than a wet scrubber (§ 62.14640 of subpart III),

(2) Alternative methods of demonstrating compliance,

(3) Alternative requirements that could change the stringency of the underlying standard, which are likely to be nationally significant, or which may require a national rulemaking and subsequent **Federal Register** notice. The following authorities may not be delegated to the State, Tribal or local agencies: Approval of alternative non-opacity emission standards, approval of alternative opacity standard, approval of major alternatives to test methods, approval of major alternatives to monitoring, and waiver of recordkeeping and reporting; and

(4) Petitions to the Administrator to add a chemical recovery unit to § 62.14525(n) of subpart III.

CISWI owners or operators who wish to establish alternative operating parameters or alternative methods of demonstrating compliance should submit a request to the Regional Office Administrator with a copy to the appropriate State or Tribe.

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation authority to State or Tribal agencies: (1) EPA approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement certain portions of this Federal plan to the extent appropriate and if allowed by State or Tribal law. Both of these options are described in more detail below.

1. Federal Plan Becomes Effective Prior to Approval of a State or Tribal Plan

After CISWI units in a State or Tribal area become subject to the Federal plan, the State or Tribal agency may still adopt and submit a plan to EPA. If EPA determines that the State or Tribal plan is as protective as the emission guidelines, EPA will approve the State or Tribal plan. If EPA determines that the plan is not as protective as the emission guidelines, EPA will disapprove the plan and the CISWI units covered in the State or Tribal plan would remain subject to the Federal plan until a State or Tribal plan covering those CISWI units is approved and effective.

Upon the effective date of an approved State or Tribal plan, the Federal plan would no longer apply to CISWI units covered by such a plan, and the State or Tribal agency would implement and enforce the State or Tribal plan in lieu of the Federal plan. When an EPA Regional Office approves a State or Tribal plan, it will amend the appropriate subpart of 40 CFR part 62 to indicate such approval.

2. State or Tribe Takes Delegation of the Federal Plan

The EPA, in its discretion, may delegate to State or eligible Tribal agencies the authority to implement this Federal plan. As discussed above, EPA believes that it is advantageous and the best use of resources for State or Tribal agencies to agree to undertake, on EPA's behalf, the administrative and substantive roles in implementing the Federal plan to the extent appropriate and where authorized by State or Tribal law. If a State requests delegation, EPA will generally delegate the entire Federal plan to the State agency. These functions include administration and oversight of compliance reporting and recordkeeping requirements, CISWI inspections, and preparation of draft notices of violation.

The EPA also believes that it is the best use of resources for Tribal agencies to undertake a role in the implementation of the Federal plan. The Tribal Authority Rule issued on February 12, 1998 (63 FR 7254) provides Tribes the opportunity to develop and implement Clean Air Act programs. However, due to resource constraints and other factors unique to Tribal governments, it leaves to the discretion of the Tribe whether to develop these programs and which elements of the program they will adopt. Consistent with the approach of the Tribal Authority Rule, EPA may choose to delegate a partial Federal plan (i.e., to delegate authority for some functions needed to carry out the plan) in appropriate circumstances and where consistent with Tribal law.

Both States and Tribal agencies, that have taken delegation, as well as EPA, will have responsibility for bringing enforcement actions against sources violating Federal plan provisions. However, EPA recognizes that Tribes have limited criminal enforcement authority, and EPA will address in the delegation agreement with the Tribe how criminal enforcement issues are referred to EPA.

D. Implementing Authority

The EPA will delegate authority within the Agency to the EPA Regional Administrators to implement the CISWI Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Office Administrator. Table 1 under Supplementary Information lists the names and addresses of the EPA Regional Office contacts and the States that they cover.

E. CISWI Federal Plan and Indian Country

The term ''Indian country,'' as used in this preamble, means (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.

The CISWI Federal plan would apply throughout Indian country to ensure that there is not a regulatory gap for existing CISWI units in Indian country. However, eligible Indian tribes now have the authority under the CAA to develop Tribal plans in the same manner that States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the CAA for which it is appropriate to treat Tribes in the same manner as States. See 63 FR 7254 (Final Rule for Indian Tribes: Air Quality Planning and Management, (Tribal Authority Rule)) (codified at 40 CFR part 49). As of

March 16, 1998, the effective date of the Tribal Authority Rule, EPA has had authority under the CAA to approve Tribal programs such as Tribal plans to implement and enforce the CISWI emission guidelines.

1. Tribal Implementation

Section 301(d) of the CAA authorizes the Administrator to treat an Indian tribe as a State under certain circumstances. The Tribal Authority Rule, which implements section 301(d) of the CAA, identifies provisions of the CAA for which it is appropriate to treat a Tribe as a State. (See 40 CFR 49.3 and 49.4.) Under the Tribal Authority Rule, a Tribe may be treated as a State for purposes of this Federal plan. If a Tribe meets the criteria below, EPA can delegate to an Indian tribe authority to implement the Federal plan in the same way it can delegate authority to a State:

(1) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(2) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(3) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(4) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the CAA and all applicable regulations. (*See* 40 CFR 49.6.)

2. EPA Implementation

The CAA also provides EPA with the authority to administer Federal programs in Indian country. This authority is based in part on the general purpose of the CAA, which is national in scope. Section 301(a) of the CAA provides EPA broad authority to issue regulations that are necessary to carry out the functions of the CAA. Congress intended for EPA to have the authority to operate a Federal program when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the CAA.

Section 301(d)(4) of the CAA authorizes the Administrator to directly administer provisions of the CAA to achieve the appropriate purpose where Tribal implementation is not appropriate or administratively not feasible. The EPA's interpretation of its authority to directly implement Clean Air Act programs in Indian country is discussed in more detail in the Tribal Authority Rule. *See* 63 FR at 7262–7263. As mentioned previously, Tribes may, but are not required to, submit a CISWI plan under section 111(d) of the CAA.

3. Applicability in Indian Country

The Federal plan would apply throughout Indian country except where an EPA-approved plan already covers an area of Indian country. This approach is consistent with EPA's implementation of the Federal Operating Permits program in Indian country (*see* 64 FR 8247 (February 19, 1999)).

VII. Title V Operating Permits

Except for the sources specified in section 62.14830 of this proposed rule, sources subject to this CISWI Federal plan must obtain title V operating permits. These title V operating permits must assure compliance with all applicable requirements for these sources, including all applicable requirements of this Federal plan. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

Owners or operators of section 129 sources (including CISWI units) subject to standards or regulations under sections 111 and 129 must operate pursuant to a title V permit not later than 36 months after promulgation of emission guidelines under sections 111 and 129 or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located, whichever is later. The EPA has interpreted section 129(e) to be consistent with section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b). (See, *e.g.*, the final Federal Plan for Hospital/Medical/Infectious Waste Incinerators, August 15, 2000 (65 FR 49868, 49878)). Section 503(d) of the CAA and 40 CFR 70.7(b) and 71.7(b) allow a source to operate without being in violation of title V once the source has submitted a timely and complete permit application, even if the source has not yet received a final title V operating permit from the permitting authority.[2] As a result, EPA interprets the dates in section 129(e) to be the dates by which complete title V applications need to be submitted. In the absence of such an interpretation, a section 129 source may be required to prepare and submit a complete title V application and the permitting authority would have to issue a permit to this source in a very short period of time.[3]

As a result of EPA's interpretation, existing CISWI units must submit complete title V applications by the later of the following dates: Not later than 36 months after the promulgation of 40 CFR part 60, subpart DDDD or by the effective date of the State, Tribal, or Federal title V operating permits program that covers the area in which the unit is located. As of today's proposal, all areas of the country are covered by effective title V programs. As a result, the relevant section 129(e) date for existing CISWI units is 36 months following promulgation of 40 CFR part 60, subpart DDDD, i.e., December 1, 2003. Therefore, December 1, 2003 is the latest possible date by which complete applications for existing CISWI units can be submitted and still be considered timely. This date applies regardless of when the CISWI Federal plan becomes effective or when an EPA approved section 111(d)/129 plan for existing CISWI units becomes effective. If, however, an earlier application deadline applies to an existing CISWI unit, then this deadline must be met in order for the unit to be in compliance with section 502(a) of the CAA. To determine when an application is due for an existing CISWI unit, section 129(e) of the CAA must be read in conjunction with section 503(c) of the CAA.

As stated in section 503(c), a source has up to 12 months to apply for a title V permit once it becomes subject to a title V permitting program.[4] For example, if an existing CISWI unit

[2] A title V application should be submitted early enough for the permitting authority to find the application either complete or incomplete before the title V application deadline. In the event the application is found incomplete by the permitting authority, the source must submit the information needed to make the application complete by the application deadline in order to obtain the application shield. *See* 40 CFR 62.14835(b) and 40 CFR 70.5(a)(2) and 71.5(a)(2).

[3] For example, in the absence of such an interpretation, if a final Federal plan were to become effective more than 24 months after the promulgation of emission guidelines promulgated under sections 111 and 129, a source, if subject to the Federal plan, would have less than 12 months to prepare and submit a complete title V permit application and to have the permit issued. EPA's interpretation allows section 129(e) to be read consistently with section 503(d) of the Act and 40 CFR 70.7(b) and 71.7(b). EPA's interpretation is also consistent with section 503(c) of the Act which requires sources to submit title V applications not later than 12 months after becoming subject to a title V permits programs. If a permit as opposed to a title V application were required by the later of the two deadlines specified in section 129(e), some section 129 sources would be required to have been *issued final title V permits* in potentially much less time than allotted for non-section 129 sources to *submit their title V applications*.

[4] If a source is subject to title V for more than one reason, the 12-month time frame for submitting a title V application is triggered by the requirement which first causes the source to become subject to title V. As provided in section 503(c) of the CAA, permitting authorities may establish permit application deadlines earlier than the 12-month deadline.

becomes subject to a title V permitting program for the first time on the effective date of this Federal plan, then the source must apply for a title V permit within 12 months of the effective date of this Federal plan in order to operate after this date in compliance with Federal law.

An application deadline earlier than either of the two dates noted above, *i.e.*, December 1, 2003 or not later than 12 months after the effective date of this Federal plan, may apply to an existing CISWI unit if it is subject to title V for more than one reason. For example, an existing CISWI unit may already be subject to title V as a result of being a major source under one or more of three major source definitions in title V—section 112, section 302, or part D of title I of the CAA. *See* 40 CFR 70.3(a)(1) and 71.3(a)(1) (subjecting major sources to title V permitting) and 40 CFR 70.2 and 71.2 (defining major source for purposes of title V). *See also* 40 CFR 70.3(a) and (b) and 71.3(a) and (b) for a list of the applicability criteria which trigger the requirement to apply for a title V permit.

If an owner or operator is already subject to title V by virtue of some requirement other than this Federal plan and has submitted a timely and complete permit application, but the draft title V permit has not yet been released by the permitting authority, then the owner or operator must supplement his title V application by including the applicable requirements of this Federal plan in accordance with 40 CFR 70.5(b) or 71.5(b). If an existing CISWI unit is a major source or is part of a major source, is subject to this Federal plan, and is already covered by a title V permit with a remaining permit term of 3 or more years on the effective date of this Federal plan, then the owner or operator will receive from his permitting authority a notice of intent to reopen his source's title V permit to include the requirements of this Federal plan. Reopenings required for such CISWI units must be completed not later than 18 months after the effective date of this Federal plan in accordance with the procedures established in 40 CFR 70.7(f)(1)(i) or 71.7(f)(1)(i). If an existing CISWI unit subject to this Federal plan does not meet the above criteria, *e.g.*, the unit is part of a nonmajor source or is covered by a permit which has a remaining term of less than 3 years on the effective date of this Federal plan, then the permitting authority does not need to reopen the source's permit, as a matter of Federal law, to include the requirements of this Federal plan.[5] However, the owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, section 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a title V permit. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

The EPA has recently become aware that there has been some confusion regarding the Title V obligations of section 129 sources that are subject to standards or regulations under sections 111 and 129. We are therefore including the following chart to help clarify when CISWI units (even those not subject to this Federal plan) must apply for a title V permit. While the following chart provides specific information relative to CISWI units, the same title V obligations apply to all section 129 sources subject to standards or regulations under sections 111 and 129. Of course, specific deadlines will vary for other section 129 sources depending on when the relevant NSPS is promulgated, when the relevant State or Tribal section 111(d)/129 plan is approved by EPA and becomes effective, etc. Lastly, the following table takes into account that as of the promulgation date, *i.e.*, December 1, 2000, for the NSPS (subpart CCCC of part 60) and emission guidelines (subpart DDDD of part 60) for CISWI units, every area of the country was covered by a title V permits program under 40 CFR part 70 or part 71. This point is relevant because a section 111/129 standard cannot trigger the requirement for a source to apply for a title V permit unless a title V permits program is in effect in the area in which the source is located.

Title V Permit Application Deadlines

If a CISWI unit is a major source or is part of a major source, and had commenced operation as of the effective date of the relevant title V permits program,	Then a complete title V application which covers the entire source[6] is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the relevant title V permits program. *See* CAA section 503(c) and 40 CFR 70.4(b)(11)(i), 71.4(i)(1), 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a major source or is part of a major source, but did not commence operation until after the relevant title V permits program became effective,	Then a complete title V application which covers the entire source is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).

[5] *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i). Owners or operators of CISWI units, which have been permitted and are subject to this Federal plan, may wish to consult their operating permits program regulations or permitting authorities to determine whether their permits must be reopened to incorporate the requirements of this Federal plan.

If a CISWI unit is a nonmajor source or is part of a nonmajor source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), and had commenced operation as of December 1, 2000,	Then a complete title V application[7] is due not later than 12 months after subpart CCCC was promulgated, *i.e.,* December 1, 2001 (or earlier if required by the title V permitting authority). *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a nonmajor source or is part of a nonmajor source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), but did not commence operation until after December 1, 2000,	Then a complete title V application[7] is due not later than 12 months (or earlier if required by the title V permitting authority) after the date the source commences operation. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).
If a CISWI unit is a nonmajor source or is part of a nonmajor source, and is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan,	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of the EPA approved State or Tribal section 11(d)/129 plan.[8] *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III.
If a CISWI unit is a nonmajor source or is part of a nonmajor source, and is subject to the CISWI Federal plan (subpart III of 40 CFR part 62),	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the effective date of 40 CFR part 62, subpart III. *See* CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i). In no event, however, can such an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III.
If a CISWI unit is required to obtain a title V permit due to triggering more than one of the applicability criteria listed above or in 40 CFR 70.3(a) or 71.3(a),	Then a complete title V application is due not later than 12 months (or earlier if required by the title V permitting authority) after the unit triggers the criterion which first caused the unit to be subject to title V. *See* CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1), 71.3(a) and (b) and 71.5(a)(1). In no event, however, can an existing CISWI unit submit a complete title V application after December 1, 2003 and have it be considered timely. *See* CAA section 129(e) and 40 CFR 62.14835 of subpart III.
Reopening Title V Permits	
If a CISWI unit is a major source or is part of a major source, is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), and is covered by a title V permit with a remaining permit term of 3 or more years on December 1, 2000,	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of 40 CFR part 60, subpart CCCC not later than June 1, 2002. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
If a CISWI unit is a major source or is part of a major source, is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan for CISWI units, and is covered by a title V permit with a remaining term of 3 or more years on the effective date of the EPA approved section 111(d)/129 plan,	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of this EPA approved and effective section 111(d)/129 plan not later than 18 months after the effective date of this plan. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
If a CISWI unit is a major source or is part of a major source, is subject to the CISWI Federal plan (supbart III of 40 CFR part 62), and is covered by a title V permit with a remaining permit term of 3 or more years on the effective date of this Federal plan,	Then the title V permitting authority must complete a reopening of the source's title V permit to incorporate the requirements of subpart III of 40 CFR part 62 not later than 18 months after the effective date of the CISWI Federal plan. *See* CAA section 502(b)(9); 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).
Updating Existing Title V Permit Applications	
If a CISWI unit is subject to the CISWI NSPS (subpart CCCC of 40 CFR part 60), but first became subject to title V permitting prior to the promulgation of this NSPS, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority,	Then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 60, subpart CCCC in accordance with 40 CFR 70.5(b) or 71.5(b).
If a CISWI unit is subject to an EPA approved and effective State or Tribal section 111(d)/129 plan for CISWI units, but first became subject to title V permitting prior to the effective date of the section 111(d)/129 plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority,	Then the owner or operator must supplement the title V application by including the applicable requirements of the approved and effective section 111(d)/129 plan in accordance with 40 CFR 70.5(b) or 71.5(b).

If a CISWI unit is subject to the CISWI Federal plan (subpart III of 40 CFR part 62), but first became subject to title V permitting prior to the effective date of this Federal plan, and the owner or operator of the unit has submitted a timely and complete title V permit application, but the draft title V permit has not yet been released by the permitting authority,	Then the owner or operator must supplement the title V application by including the applicable requirements of 40 CFR part 62, subpart III in accordance with 40 CFR 70.5(b) or 71.5(b).

[6] A title V application from a major source must address all emissions units at the title V source, not just the section 129 emissions unit. *See* 40 CFR 70.3(c)(1) and 71.3(c)(1). (For information on aggregating emissions units to determine what is a source under title V, see the definition of *major source* in 40 CFR 70.2, 71.2, and 63.2.)

[7] Consistent with 40 CFR 70.3(c)(2) and 71.3(c)(2), a permit application from a nonmajor title V source is only required to address the emissions units which caused the source to be subject to title V. The requirements which trigger the need for the owner or operator of a nonmajor source to apply for a title V permit are found in 40 CFR 70.3(a) and (b) and 71.3(a) and (b). Permits issued to these nonmajor sources must include *all* of the applicable requirements that apply to the triggering units, *e.g.*, State Implementation Plan requirements, not just the requirements which caused the source to be subject to title V. *See* footnote #2 in *Change to Definition of Major Source* rule, November 27, 2001 (66 FR 59161, 59163).

[8] If a CISWI unit becomes subject to an approved and effective State or Tribal section 111(d)/129 plan after being subject to an effective Federal plan, the CISWI unit is still required to file a complete title V application consistent with the application deadlines for units subject to the CISWI Federal plan.

Title V and Delegation of a Federal Plan

During the development of the Federal plan for Hospital/Medical/Infectious Waste Incinerators (HMIWI), a State agency raised the question of whether a title V operating permits program could be used as a mechanism for transferring the authority to implement and enforce section 111/129 requirements from EPA to State and local agencies. *See* ''Transfer of Authority'' section of final Federal plan for HMIWI, August 15, 2000 (65 FR 49868, 49873). The State agency noted that the proposal for that rulemaking described two mechanisms for transferring authority to State and local agencies following promulgation of the Federal plan. Those two mechanisms were: (1) The approval of a State or Tribal plan after the Federal plan is in effect; and (2) if a State or Tribe does not submit or obtain approval of its own plan, EPA delegation to a State or Tribe of the authority to implement and enforce the HMIWI Federal plan. The State asked EPA to recognize the Title V operating permits program as a third mechanism for transferring authority to State and local agencies. The commenter said that State and local agencies implement Title V programs and that Title V permits must include the requirements of the Federal plan. The commenter concluded that Title V permitting authorities already have implementation responsibility for the Federal plan through their Title V permits programs, regardless of whether the authority to implement the Federal plan is delegated to the State or local agency.

In its response to the State, the EPA explained why the issuance of a Title V permit is not equivalent to the approval of a State plan or delegation of a Federal plan by focusing on situations in which a Title V permitting authority without delegation of a Federal plan could not implement and enforce section 111/129 requirements. This situation would arise any time a Title V permit was not in effect for a source subject to the section 111/129 Federal plan or where the permit did not contain the applicable section 111/129 requirements. For example, a title V source may be allowed to operate without a title V permit for a number of years in some cases between the time the source first triggers the requirement to apply for a permit and the issuance of the permit. The preamble to the final HMIWI Federal plan also noted that a source with a Title V permit with a permit term less than 3 years is not required by part 70 to have its permit reopened by a State or Tribe to include new applicable requirements such as the HMIWI standard.[9] *See* 40 CFR 70.7(f)(1)(i).

In addition to the explanation provided in the preamble to the final HMIWI Federal plan, there are additional State implementation and enforcement gaps which would not be addressed by implementing and enforcing the section 111/129 standard through a Title V permit. The following is an example of such a gap: Title V permits are not permanent. With two exceptions, all permits must be renewed at least every 5 years [10]. Although 40 CFR 70.4(b)(10) requires States to provide that a permit or the terms and conditions of a permit may not expire until the permit is renewed, this requirement only applies if a timely and complete application for a renewal permit has been submitted by the source, creating a potential gap. In contrast to the example, the two mechanisms that EPA has identified for transferring authority ensure that a State or Tribe can implement and enforce the section 111/129 standards at all times.

Legally, delegation of a standard or requirement results in a delegated State or Tribe standing in for EPA as a matter of Federal law. This means that obligations a source may have to the EPA under a federally promulgated standard become obligations to a State (except for functions that the EPA retains for itself) upon delegation.[11] Although a State or Tribe may have the authority to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in these permits without first taking delegation of the section 111/129 Federal plan, the State or Tribe is not standing in for EPA as a matter of Federal law in this situation. Where a State or Tribe does not take delegation of a section 111/129 Federal plan, obligations that a source has to EPA under the Federal plan continue after a title V permit is issued to the source. As a result, the EPA continues to maintain that an approved part 70 operating permits program cannot be used as a mechanism to transfer the authority to implement and enforce the Federal plan from the EPA to a State or Tribe.

As mentioned above, a State or Tribe may have the authority under State or Tribal law to incorporate section 111/129 requirements into its title V permits, and implement and enforce these requirements in that context without first taking delegation of the section 111/129 Federal plan.[12] Some States or

[9] An owner or operator of a source subject to a section 111/129 Federal plan remains subject to, and must act in compliance with, section 111/129 requirements and all other applicable requirements to which the source is subject regardless of whether these requirements are included in a title V permit. *See* 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

[10] Under 40 CFR 70.4(b)(3)(iv), permitting authorities are allowed to issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years, provided that the permits are reviewed at least every 5 years. Permits with acid rain provisions must be issued for a fixed term of five years; shorter terms for such permits are not allowed.

[11] If the Administrator chooses to retain certain authorities under a standard, those authorities cannot be delegated, *e.g.*, alternative methods of demonstrating compliance.

[12] The EPA interprets the phrase ''assure compliance'' in section 502(b)(5)(A) to mean that permitting authorities will implement and enforce

Tribes, however, may not be able to implement and enforce a section 111/129 standard in a title V permit until the section 111/129 standard has been delegated. In these situations, a State or Tribe should not issue a part 70 permit to a source subject to a Federal plan before taking delegation of the section 111/129 Federal plan.

If a State or Tribe can provide an Attorney General's (AG's) opinion delineating its authority to incorporate section 111/129 requirements into its Title V permits, and then implement and enforce these requirements through its Title V permits without first taking delegation of the requirements, then a State or Tribe does not need to take delegation of the section 111/129 requirements for purposes of title V permitting.[13] In practical terms, without approval of a State or Tribal plan, delegation of a Federal plan, or an adequate AG's opinion, States and Tribes with approved part 70 permitting programs open themselves up to potential questions regarding their authority to issue permits containing section 111/129 requirements, and to assure compliance with these requirements. Such questions could lead to the issuance of a notice of deficiency for a State's or Tribe's part 70 program. As a result, prior to a State or Tribal permitting authority drafting a part 70 permit for a source subject to a section 111/129 Federal plan, the State or Tribe, EPA Regional Office, and source in question are advised to ensure that delegation of the relevant Federal plan has taken place or that the permitting authority has provided to the EPA Regional Office an adequate AG's opinion.

In addition, if a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, a section 111/129 source subject to the Federal plan in that State must simultaneously submit to both EPA and the State or Tribe all reports required by the standard to be submitted to the EPA. Given that these reports are necessary to implement and enforce the section 111/129 requirements when they have been included in title V permits, the permitting authority needs to receive these reports at the same time as the EPA.

In the situation where a permitting authority chooses to rely on an AG's opinion and not take delegation of a Federal plan, EPA Regional Offices will be responsible for implementing and enforcing section 111/129 requirements outside of any title V permits. Moreover, in this situation, EPA Regional Offices will continue to be responsible for developing progress reports, entering emissions data into the Aerometric Information Retrieval System (AIRS)/AIRS Facility Subsystem (AFS), and conducting any other administrative functions required under this Federal plan or any other section 111/129 Federal plan. See Section III.J. of this preamble titled ''Progress Reports'; section II.J. of the proposed Federal plan for HMIWI, July 6, 1999 (64 FR 36426, 36431); 40 CFR 60.25(e), and Appendix D of 40 CFR part 60.

It is important to note that the EPA is not using its authority under 40 CFR 70.4(i)(3) to request that all States and Tribes which do not take delegation of this Federal plan submit supplemental AG's opinions at this time. However, the EPA Regional Offices shall request, and permitting authorities shall provide, such opinions when the EPA questions a State's or Tribe's authority to incorporate section 111/129 requirements into a title V permit, and implement and enforce these requirements in that context without delegation.

Lastly, the EPA would like to correct and clarify the following sentences from the ''Transfer of Authority'' section of the preamble to the final HMIWI Federal plan (65 FR 49868, 49873): ''Prior to delegation, only the EPA will have enforcement authority. In neither instance does the title V permit status of a source affect the enforcement responsibility of EPA and the State or Tribal permitting authorities.'' In situations where a State or Tribe is subject to a section 111/129 Federal plan and does not take delegation of the Federal plan, the following applies: Prior to delegation, only EPA can implement and enforce section 111/129 requirements outside of a title V permit. Whenever there is a title V permit in effect which includes section 111/129 requirements, however, EPA and the State or Tribe have dual authority to implement and enforce the section 111/129 requirements in the title V permit. When a State or Tribe has not taken delegation of a section 111/129 Federal plan, the previous sentence is relevant only in situations where a State or Tribe has the authority to incorporate section 111/129 requirements into title V permits, and to implement and enforce these requirements in title V permits without delegation.

VIII. Administrative Requirements

This section addresses the following administrative requirements: Docket, Public Hearing, Executive Orders 12866, 13132, 13175, 13045, and 13211, Unfunded Mandates Reform Act, Regulatory Flexibility Act, Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act, Paperwork Reduction Act, and the National Technology Transfer and Advancement Act. Since today's rule simply proposes to implement the CISWI emission guidelines (40 CFR part 60, subpart DDDD) as promulgated on December 1, 2000, and does not impose any new requirements, much of the following discussion of administrative requirements refers to the documentation of applicable administrative requirements as discussed in the preamble to the rule promulgating the emission guidelines (65 FR 75338, December 1, 2000).

A. Docket

The docket is intended to be an organized and complete file of the administrative records compiled by EPA. 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 they can effectively participate in the rulemaking process. Along with proposed and promulgated standards and their preambles, the contents of the docket (with limited exceptions) will serve as the record in the case of judicial review. See section 307(d)(7)(A) of the CAA.

As discussed above, a docket has been prepared for this action pursuant to the procedural requirements of section 307(d) of the CAA, 42 U.S.C. 7607(d). Supporting information is included in Docket A–2000–52. Docket number A–94–63 contains the technical support for the final emission guidelines, 40 CFR part 60, subpart DDDD. Docket A–2000–52 incorporates all of the information in Docket A–94–63.

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentations on the proposed standards should contact EPA (*see* **ADDRESSES**). If a public hearing is requested and held, EPA will ask clarifying questions during the oral

each applicable standard, regulation, or requirement which must be included in the title V permits the permitting authorities issue. *See* definition of ''applicable requirement'' in 40 CFR 70.2. *See also* 40 CFR 70.4(b)(3)(i) and 70.6(a)(1).

[13] It is important to note that an AG's opinion submitted at the time of initial title V program approval is sufficient if it demonstrates that a State or Tribe has adequate authority to incorporate section 111/129 requirements into its title V permits, and to implement and enforce these requirements through its title V permits without delegation.

presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement on or before January 24, 2003. Written statements should be addressed to the Air and Radiation Docket and Information Center (*see* **ADDRESSES**), and refer to Docket No. A–2000–52. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing, if held. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or mailed upon request, at the Air and Radiation Docket and Information Center (*see* **ADDRESSES**).

C. 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 OMB review and the requirements of the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

The EPA considered the 2000 emission guidelines to be significant and the rules were reviewed by OMB in 2000. *See* 65 FR 75338, December 1, 2000. The Federal plan promulgated today would simply implement the 2000 emission guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 2000 emission guidelines. Therefore, this regulatory action is considered ''not significant'' under Executive Order 12866.

D. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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 establishes emission limits and other requirements for solid waste incineration units that are not covered by an EPA-approved and effective State or Tribal plan. The EPA is required by section 129 of the CAA, 42 U.S.C. 7429, to establish the standards for such units. This regulation primarily affects private industry and does not impose significant economic costs on State or local governments. The standards established by this rule apply to facilities that operate commercial or industrial solid waste incineration units located in States that do not have EPA-approved plans covering such units by the effective date of the promulgated Federal plan (and the owners or operators of such facilities). The regulation does not include an express provision preempting State or local regulations. However, once this Federal plan is in effect, covered facilities would be subject to the standards established by this rule, regardless of any less protective State or local regulations that contain emission limitations for the pollutants addressed by this rule. To the extent that this might preempt State or local regulations, it does not significantly affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule; and EPA has complied with the requirements of section 4(e), to the extent that they may be applicable to the regulations, by providing notice to potentially affected State and local officials through publication of this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA consulted with representatives of State and local governments to enable them to provide meaningful and timely input into the development of the CISWI emission guidelines. This consultation took place during the Industrial Combustion Coordinated Rulemaking Federal Advisory Committee Act committee meetings, where members representing State and local governments participated in developing recommendations for our combustion-related rulemakings, including the CISWI emission guidelines. Additionally, EPA sponsored the Small Communities Outreach Project, which involved meetings with elected officials and other government representative to provide them with information about the CISWI emission guidelines and to solicit their comments. The concerns raised by representative of State and local governments were considered during the development of the CISWI emission guidelines.

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.

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

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

This 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.

The EPA knows of no CISWI units presently owned by Indian tribal

governments. However, if any exist now or in the future, the rule would not have tribal implications on these tribal governments as defined by the Executive Order. This Federal plan simply implements the 2000 emission guidelines. It does not result in any additional control requirements nor imposes any additional costs above those previously considered during promulgation of the 2000 emission guidelines. Thus, the requirements of Executive Order 13175 do not apply.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, (2) concerns an environmental health or safety risk that EPA has reason to believe may disproportionately affect children. If the regulatory action meets these 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 EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, this proposed rule is not economically significant as defined by Executive Order 12866.

G. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 F.R. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us 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 of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, thereby enabling officials of affected small governments to have meaningful and timely input in the development of the regulatory proposal with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The 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 1 year. The environmental impact analysis for the emission guidelines estimates the total national annualized cost impact of this regulatory action at $11.6 million per year (Docket A–94–63). This proposed Federal plan will apply to only a subset of the units considered in the environmental impacts analysis for the emission guidelines. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. Additionally, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because commercial and industrial units are not likely to be owned by small governments.

I. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires Federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has less than 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. The SBA guidelines define a small business based on number of employees or annual revenues and the size standards vary from industry to industry. Generally, businesses covered by the North American Industrial Classification System (NAICS) codes affected by this rule are considered small if they have less than 500 employees or less than $5 million in annual sales.

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.

During the 2000 CISWI emission guidelines rulemaking, EPA determined that based on the low number of affected small entities in each individual market, the alternative method of waste disposal available, and the relatively low control cost, the CISWI emission guidelines should not generate a significant small business impact on a substantial number of small entities in the commercial and industrial sectors. The EPA determined that it was not necessary to prepare a regulatory flexibility analysis in connection with the final emission guidelines. The EPA has also determined that the final emission guidelines would not have a significant economic impact on a substantial number of small entities (65 FR 75348). This Federal plan would not establish any new requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA has determined that this proposed Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

J. Paperwork Reduction Act

The information collection requirements have 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 for the emission guidelines (ICR No. 1927.02 for subpart DDDD) and copies may be obtained from Susan Auby by mail at U.S. Environmental Protection Agency, Office of Environmental Information; Collection Strategies Division (2822T); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. Copies may also be downloaded from the internet at *http://www.epa.gov/icr*.

This ICR reflects the burden estimate for the emission guidelines which were promulgated in the **Federal Register** on December 1, 2000. The burden estimate includes the burden associated with State or Tribal plans as well as the burden associated with the proposed Federal plan. Consequently, the burden estimates described below overstate the information collection burden associated with the Federal plan. However, upon approval by EPA, a State or Tribal plan becomes Federally enforceable. Therefore, it is important to estimate the full burden associated with the State or Tribal plans and the Federal plan. As State or Tribal plans are approved, the Federal plan burden will decrease, but the overall burden of the State or Tribal plans and the Federal plan will remain the same.

The Federal plan contains monitoring, reporting, and recordkeeping requirements. The information will be used to ensure that the Federal plan requirements are met on a continuous basis. Records and reports will be necessary to enable us to identify waste incineration units that may not be in compliance with the Federal plan requirements. Based on reported information, EPA would decide which units and what records or processes should be inspected. The records that owners and operators of existing CISWI units maintain will indicate to EPA whether personnel are operating and maintaining control equipment property.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The estimated average annual burden for the first 3 years after promulgation of the emission guidelines for industry and the implementing agency is outlined below.

Affected entity	Total hours	Labor costs	Capital costs	O&M costs	Total costs
Industry	9,145	$407,067	0	0	$407,067
Implementing agency	1,817	$48,386	0	0	$48,386

The EPA expects the Federal plan to affect a maximum of 116 units over the first 3 years. (Note: This assumes that no State plans are in effect.) The EPA assumes that 6 existing units will be replaced by 6 new units each year. There are no capital, start-up, or operation and maintenance costs for existing units during the first 3 years. The implementing agency would not incur any capital or start-up costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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 number for this proposed rule and for the emissions guidelines which it implements is 2060–0451. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272) directs EPA to use voluntary consensus standards in regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed Federal plan involves technical standards. The EPA proposes in this plan to use EPA Methods 1, 3A, 3B, 5, 6, 6C, 7, 7A, 7C, 7D, 7E, 9, 10, 10A, 10B, 23, 26A, and 29. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 7A, 7D, 9, and 10B. The search and review results have been documented and are placed in the Docket No. A–2000–52 for this proposed plan.

This search for emission measurement procedures identified 24 voluntary consensus standards. The EPA determined that 20 of these 24 standards were impractical alternatives to EPA test methods for the purposes of this proposed Federal plan. Therefore, EPA does not propose to adopt these standards today. The reasons for this determination for the 20 methods are discussed below.

The standard, ASTM D3162 (1994) ''Standard Test Method for Carbon Monoxide in the Atmosphere (Continuous Measurement by Nondispersive Infrared Spectrometry),'' is impractical as an alternative to EPA Method 10 in this proposed Federal plan because this ASTM standard, which is stated to be applicable in the range of 0.5–100 ppm CO, does not cover the potential range in the plan (up to 157 ppm). Whereas EPA Method 10 has a range from 20–1000 ppm CO. Also, ASTM D3162 does not provide a procedure to remove carbon dioxide interference. Therefore, this ASTM standard is not appropriate for combustion source conditions. In terms of NDIR instrument performance

specifications, ASTM D3162 has much higher maximum allowable rise and fall times (5 minutes) than EPA Method 10 (which has 30 seconds). However, it should be noted that ASTM D3162 has more quality control requirements than EPA Method 10 in terms of instrument calibration procedures, span gas cylinder validation procedures, and operational checks.

The standard ASTM E1979–98 (1998), ''Standard Practice for Ultrasonic Extraction of Paint, Dust, Soil, and Air Samples for Subsequent Determination of Lead,'' is impractical as an alternative to EPA Method 29 in this proposed Federal plan. This ASTM standard does not require the use of hydrogen fluoride (HF) as in EPA Method 29 and, therefore, it cannot be used for the preparation, digestion, and analysis of Method 29 samples. Additionally, Method 29 requires the use of a glass fiber filter, whereas this ASTM standard requires cellulose filters and other probable nonglass fiber media which cannot be considered equivalent to EPA Method 29.

The European standard EN 1911–1,2,3 (1998), ''Stationary Source Emissions—Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text,'' is impractical as an alternative to EPA Method 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26A because the sample absorbing solution (water) would be expected to capture both HCl and chlorine gas, if present, without the ability to distinguish between the two. The EPA Method 26A uses an acidified absorbing solution to first separate HCl and chlorine gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for chlorine gas would be expected to vary as the pH of the water changed during sampling.

The following ten methods are impractical alternatives to EPA test methods for the purposes of this plan because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154–91 (1995), ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' for EPA Methods 1 and 3B; ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions, for Automated Determination of Gas Concentration,'' for EPA Method 3A; ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' for EPA Method 3A; CAN/CSA Z223.2–M86(1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' for EPA Method 3A; ASME C00031 or PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses,'' for EPA Methods 6 and 7; ASTM D1608–98, ''Test Method for Oxides of Nitrogen in Gaseous Combustion Products (Pheno-Disulfonic Acid Procedures),'' for EPA Method 7; ISO 7934:1998, ''Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Hydrogen Peroxide/Barium Perchlorate/Thorin Method,'' for EPA Method 6; ISO 11564:1998, ''Stationary Source Emissions—Determination of the Mass Concentration of Nitrogen Oxides—NEDA (naphthylethylenediamine)/Photometric Method,'' for EPA Methods 7 and 7C; CAN/CSA Z223.21–M1978, ''Method for the Measurement of Carbon Monoxide: 3—Method of Analysis by Non-Dispersive Infrared Spectrometry,'' for EPA Methods 10 and 10A; and European Committee for Standardization (CEN) EN 1948–3 (1997), ''Determination of the Mass Concentration of PCDD'S/PCDF'S—Part 3: Identification and Quantification,'' for EPA Method 23.

The following seven methods are impractical alternatives to EPA test methods for the purposes of this Federal plan because they lacked sufficient quality assurance and quality control requirements necessary for EPA compliance assurance requirements: ASME PTC–38–80 R85 or C00049, ''Determination of the Concentration of Particulate Matter in Gas Streams,'' for EPA Method 5; ASTM D3685/D3685M–98, ''Test Methods for Sampling and Determination of Particulate Matter in Stack Gases,'' for EPA Method 5; ISO 9096:1992, ''Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method,'' for EPA Method 5; CAN/CSA Z223.1–M1977, ''Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams,'' for EPA Method 5; ISO 11632:1998, ''Stationary Source Emissions—Determination of the Mass Concentration of Sulfur Dioxide—Ion Chromatography,'' for EPA Method 6; CAN/CSA Z223.24–M1983, ''Method for the Measurement of Nitric Oxide and Nitrogen Dioxide in Air,'' for EPA Method 7; and CAN/CSA Z223.26–M1987, ''Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometeric Method,'' for EPA Method 29.

The following four of the 24 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this proposed plan because they are under development by a voluntary consensus body: ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A; ASTM Z6449Z, ''Standard Method for the Determination of Sulfur Dioxide in Stationary Sources,'' for EPA Method 6; ASTM Z6590Z, ''Manual Method for Both Speciated and Elemental Mercury,'' for EPA Method 29 (portion for mercury only); prEN 13211 (1998), ''Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury,'' for EPA Method 29 (portion for mercury only). While EPA is not proposing to include these four voluntary consensus standards in today's proposed plan, the EPA will consider the standards when final.

The EPA takes comment on the compliance demonstration requirements proposed in this Federal plan and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this plan should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, Appendix A was used).

Table 1 of proposed Subpart III lists the EPA testing methods included in the emission Federal Plan Requirements for Commercial and Industrial Solid Waste Incinerators. Under 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Metals, Nitrogen dioxide, Particulate matter, Sulfur oxides, Waste treatment and disposal.

Dated: November 6, 2002.

Christine Todd Whitman,

Administrator.

40 CFR part 62 is proposed to be amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Amend § 62.13 by adding paragraph (d) to read as follows:

§ 62.13 Federal plans.

* * * * *

(d) The substantive requirements of the Commercial and industrial solid waste incineration units Federal plan are contained in subpart III of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

3. Amend part 62 by adding subpart III to read as follows:

Subpart III—Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction on or Before November 30, 1999

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62.14505 What are the principal components of this subpart?

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Introduction

§ 62.14500 What is the purpose of this subpart?

(a) This subpart establishes emission requirements and compliance schedules for the control of emissions from commercial and industrial solid waste incineration (CISWI) units that are not covered by an EPA approved and currently effective State or Tribal plan. The pollutants addressed by these emission requirements are listed in Table 1 of this subpart. These emission requirements are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of 40 CFR part 60.

(b) In this subpart, *you* means the owner or operator of a CISWI unit.

§ 62.14505 What are the principal components of this subpart?

This subpart contains the eleven major components listed in paragraphs (a) through (k) of this section.

(a) Increments of progress toward compliance.

(b) Waste management plan.

(c) Operator training and qualification.

(d) Emission limitations and operating limits.

(e) Performance testing.

(f) Initial compliance requirements.

(g) Continuous compliance requirements.

(h) Monitoring.

(i) Recordkeeping and reporting.

(j) Definitions.

(k) Tables.

Applicability

§ 62.14510 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a commercial and industrial solid waste incinerator (CISWI) unit as defined in § 62.14840 and the CISWI unit meets the criteria described in paragraphs (a)(1) through (a)(3) of this section.

(1) Construction of your CISWI unit commenced on or before November 30, 1999.

(2) Your CISWI unit is not exempt under § 62.14525.

(3) Your CISWI unit is not regulated by an EPA approved and currently effective State or Tribal plan, or your CISWI unit is located in any State whose approved State or Tribal plan is subsequently vacated in whole or in part.

(b) If you made changes after June 1, 2001 that meet the definition of modification or reconstruction after promulgation of the final 40 CFR part 60, subpart CCCC (New Source Performance Standards for Commercial and Industrial Solid Waste Incineration Units), your CISWI unit is subject to subpart CCCC of 40 CFR part 60 and this subpart no longer applies to that unit.

(c) If you make physical or operational changes to your existing CISWI unit primarily to comply with this subpart, then such changes do not qualify as modifications or reconstructions under subpart CCCC of 40 CFR part 60.

§ 62.14515 Can my CISWI unit be covered by both a State plan and this subpart?

(a) If your CISWI unit is located in a State that does not have an EPA-approved State plan or your State's plan has not become effective, this subpart applies to your CISWI unit until EPA approves a State plan that covers your CISWI unit and that State plan becomes effective. However, a State may enforce the requirements of a State regulation while your CISWI unit is still subject to this subpart.

(b) After the EPA approves a State plan covering your CISWI unit, and after that State plan becomes effective, you will no longer be subject to this subpart and will only be subject to the approved and effective State plan.

§ 62.14520 How do I determine if my CISWI unit is covered by an approved and effective State or Tribal plan?

This part (40 CFR part 62) contains a list of State and Tribal areas with approved Clean Air Act section 111(d) and section 129 plans along with the effective dates for such plans. The list is published annually. If this part does not indicate that your State or Tribal area has an approved and effective plan, you should contact your State environmental agency's air director or your EPA Regional Office to determine if EPA has approved a State plan covering your unit since publication of the most recent version of this subpart.

§ 62.14521 If my CISWI unit is not listed in the Federal plan inventory, am I exempt from this subpart?

Not necessarily. Sources subject to this subpart are not limited to the inventory of sources listed in Docket A–2000–52 for the Federal plan. If your CISWI units meets the applicability criteria in § 62.14510, this subpart applies to you whether or not your unit is listed in the Federal plan inventory in the docket.

§ 62.14525 Can my combustion unit be exempt from this subpart?

This subpart exempts fifteen types of units described in paragraphs (a) through (o) of this section except for the requirements specified in this section and in § 62.14531.

(a) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 62.14840 are not subject to this subpart if you meet the two requirements specified in paragraphs (a)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(b) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in § 62.14840 are not subject to this subpart if you meet the two requirements specified in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator that the unit meets these criteria.

(2) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(c) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in paragraphs (c)(1) or (2) of this section.

(1) Units that are regulated under subpart Ea of 40 CFR part 60 (Standards of Performance for Municipal Waste Combustors); subpart Eb of 40 CFR part 60 (Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994); subpart Cb of 40 CFR part 60 (Emission Guidelines and Compliance Times for Large Municipal Waste Combustors Constructed on or Before September 20, 1994); subpart AAAA of 40 CFR part 60 (Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units); or subpart BBBB of 40 CFR part 60 (Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units).

(2) Units that burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR part 60 subpart Ea, subpart Eb, subpart AAAA, and subpart BBBB, and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements

in paragraphs (c)(2)(i) and (ii) of this section.

(i) Notify the Administrator that the unit meets these criteria.

(ii) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(d) *Medical waste incineration units.* Incineration units regulated under subpart Ec of 40 CFR part 60 (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996); 40 CFR part 60 subpart Ce (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators); and 40 CFR part 62 subpart HHH (Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed on or before June 20, 1996).

(e) *Small power production facilities.* Units that meet the three requirements specified in paragraphs (e)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit meets all of these criteria.

(f) *Cogeneration facilities.* Units that meet the three requirements specified in paragraphs (f)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit meets all of these criteria.

(g) *Hazardous waste combustion units.* Units regulated under subpart EEE of part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(h) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

(i) *Air curtain incinerators.* Air curtain incinerators that burn 100 percent wood waste and clean lumber are only required to meet the requirements under ''Air Curtain Incinerators That Burn 100 Percent Wood Wastes and Clean Lumber'' (§§ 62.14765 through 62.14825) and the title V operating permit requirements (§§ 62.14830 and 62.14835).

(j) *Cyclonic barrel burners.*

(k) *Rack, part, and drum reclamation units.*

(l) *Cement kilns.*

(m) *Sewage sludge incinerators.* Incineration units regulated under subpart O of 40 CFR part 60 (Standards of Performance for Sewage Treatment Plants).

(n) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in paragraphs (n)(1) through (7) of this section are considered chemical recovery units.

(1) Units burning only pulping liquors (*i.e.*, black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(2) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(3) Units burning only wood or coal feedstock for the production of charcoal.

(4) Units burning only manufacturing byproduct streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(5) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(6) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(7) Units burning only photographic film to recover silver.

(o) *Laboratory units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

§ 62.14530 What if I have a chemical recovery unit that is not listed in § 62.14525(n)?

(a) If you have a recovery unit that is not listed in § 62.14525(n), you can petition the Administrator to add the unit to the list. The petition must contain the six items in paragraphs (a)(1) through (6) of this section.

(1) A description of the source of the materials being burned.

(2) A description of the composition of the materials being burned, highlighting the chemical constituents in these materials that are recovered.

(3) A description (including a process flow diagram) of the process in which the materials are burned, highlighting the type, design, and operation of the equipment used in this process.

(4) A description (including a process flow diagram) of the chemical constituent recovery process, highlighting the type, design, and operation of the equipment used in this process.

(5) A description of the commercial markets for the recovered chemical constituents and their use.

(6) The composition of the recovered chemical constituents and the composition of these chemical constituents as they are bought and sold in commercial markets.

(b) Until the Administrator approves the petition, the incineration unit is covered by this subpart.

(c) If a petition is approved, the Administrator will amend § 62.14525(n) to add the unit to the list of chemical recovery units.

§ 62.14531 When must I submit any records required pursuant to an exemption allowed under § 62.14525?

Owners or operators of sources that qualify for the exemptions in § 62.14525(a) through (o) must submit any records required to support their claims of exemption to the EPA Administrator (or delegated enforcement authority) upon request. Upon request by any person under the regulation at part 2 of this chapter (or a comparable law or regulation governing a delegated enforcement authority), the EPA Administrator (or delegated enforcement authority) must request the records in § 62.14525(a) through (o) from an owner or operator and make such records available to the requestor to the extent required by part 2 of this chapter (or a comparable law governing a delegated enforcement authority). Any records required under § 62.14525(a) through (o) must be maintained by the source for a period of at least 5 years. Notifications of exemption claims required under § 62.14525(a) through (o) of this section must be maintained by the EPA or delegated enforcement authority for a period of at least 5 years. Any information obtained from an owner or operator of a source accompanied by a claim of confidentiality will be treated in accordance with the regulations in part 2 of this chapter (or a comparable law governing a delegated enforcement authority).

Compliance Schedule and Increments of Progress

§ 62.14535 When must I comply with this subpart if I plan to continue operation of my CISWI unit?

If you plan to continue operation of your CISWI unit, then you must follow the requirements in paragraph (a) or (b) of this section depending on when you plan to come into compliance with the requirements of this subpart.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, then you must complete the requirements of paragraphs (a)(1) through (a)(5) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(2) You must submit a waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

(3) You must achieve final compliance by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**. To achieve final compliance, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

(4) You must conduct the initial performance test within 90 days after the date when you are required to achieve final compliance under paragraph (a)(3) of this section.

(5) You must submit an initial report including the results of the initial performance test no later than 60 days following the initial performance test (see §§ 62.14700 through 62.14760 for complete reporting and recordkeeping requirements).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, but before the date two years after promulgation of the CISWI Federal plan in the **Federal Register**, you must petition for and be granted an extension of the final compliance date specified § 62.14535(a)(3) by meeting the requirements of § 62.14536 and you must meet the requirements for increments of progress specified in § 62.14540 through § 62.14565. To achieve the final compliance increment of progress, you must complete the requirements of paragraphs (b)(1) through (b)(5) of this section.

(1) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(2) You must submit a waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

(3) You must achieve final compliance by the date two years after promulgation of the CISWI Federal plan in the **Federal Register**. For the final compliance increment of progress, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

(4) You must conduct the initial performance test within 90 days after the date when you are required to achieve final compliance under paragraph (b)(3) of this section.

(5) You must submit an initial report including the result of the initial performance no later than 60 days following the initial performance test (see §§ 62.14700 through 62.14760 for complete reporting and recordkeeping requirements).

§ 62.14536 What steps are required to request an extension of the initial compliance date if I plan to continue operation of my CISWI unit?

If you plan to continue operation and want to come into compliance with the requirements of this subpart after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, but before the date two years after promulgation of the CISWI Federal plan in the **Federal Register**, then you must petition to the Administrator to grant you an extension by following the procedures outlined in paragraphs (a) and (b) of this section.

(a) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) on or before the date two months after promulgation of the CISWI Federal plan in the **Federal Register**.

(b) Your request must include documentation of the analyses undertaken to support your need for an extension, including an explanation of why you are unable to meet the final compliance date specified in § 62.14535(a)(3) and why your requested extension date is needed to provide sufficient time for you to design, fabricate, and install the emissions control systems necessary to meet the requirements of this subpart. A request based upon the avoidance of costs of meeting provisions of this Subpart is not acceptable and will be denied.

§ 62.14540 When must I complete each increment of progress?

If you plan to come into compliance after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, you must meet the two increments of progress specified in paragraphs (a) and (b) of this section.

(a) *Increment 1.* Submit a final control plan by the date 6 months after promulgation of the CISWI Federal plan in the **Federal Register**.

(b) *Increment 2.* Reach final compliance by the date 2 years after promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14545 What must I include in each notification of achievement of an increment of progress?

Your notification of achievement of an increment of progress must include the four items specified in paragraphs (a) through (d) of this section.

(a) Notification of the date that the increment of progress has been achieved.

(b) Any items required to be submitted with each increment of progress.

(c) Signature of the owner or operator of the CISWI unit.

(d) The date you were required to complete the increment of progress.

§ 62.14550 When must I submit a notification of achievement of the first increment of progress?

Your notification for achieving the first increment of progress must be postmarked no later the date ten days after the date that is six months from the date of promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14555 What if I do not meet an increment of progress?

Failure to meet an increment of progress is a violation of the standards under this subpart. If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the due date for that increment of progress. You must inform the Administrator that you did not meet the increment, and you must continue to

submit reports each subsequent calendar month until the increment of progress is met.

§ 62.14560 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (a) and (b) of this section.

(a) Submit the final control plan that includes the six items described in paragraphs (a)(1) through (6) of this section.

(1) A description of the devices for air pollution control and process changes that you will use to comply with the emission limitations and other requirements of this subpart.

(2) The type(s) of waste to be burned.

(3) The maximum design waste burning capacity.

(4) The anticipated maximum charge rate.

(5) If applicable, the petition for site-specific operating limits under § 62.14640.

(6) A schedule that includes the date by which you will award the contracts to procure emission control equipment or related materials, initiate on-site construction, initiate on-site installation of emission control equipment, and/or incorporate process changes, and the date by which you will initiate on-site construction.

(b) Maintain an onsite copy of the final control plan.

§ 62.14565 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must incorporate all process changes and complete retrofit construction of control devices, as specified in the final control plan, so that, when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

§ 62.14570 What must I do if I plan to permanently close my CISWI unit?

If you plan to permanently close your CISWI unit, then you must follow the requirements in either paragraph (a) or (b) of this section depending on when you plan to shut down.

(a) If you plan to shut down by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, rather that come into compliance with the complete set of requirements in this subpart, then you must shut down by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**. You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 regardless of when you shut down.

(b) If you plan to shut down rather than come into compliance with the complete set of requirements of this subpart, but are unable to shut down by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, then you must petition EPA for and be granted an extension by following the procedures outlined in paragraphs (b)(1) through (5) of this section.

(1) You must submit your request for an extension to the EPA Administrator (or delegated enforcement authority) by the date two months after promulgation of the CISWI Federal plan in the **Federal Register**. Your request must include:

(i) Documentation of the analyses undertaken to support your need for an extension, including an explanation of why your requested extension date is sufficient time for you to shut down while the date one year after promulgation of the CISWI Federal plan in the **Federal Register** does not provide sufficient time for shut down. A request based upon the avoidance of costs of meeting provisions of this Subpart is not acceptable and will be denied. Your documentation must include an evaluation of the option to transport your waste offsite to a commercial or municipal waste treatment and/or disposal facility on a temporary or permanent basis; and

(ii) Documentation of incremental steps of progress, including dates for completing the increments of progress, that you will take towards shutting down. Some suggested incremental steps of progress towards shut down are provided as follows:

If you . . .	then your increments of progress could be . . .
(A) Need an extension so you can install on onsite alternative waste treatment technology before you shut down your CISWI.	(*1*) Date when you will enter into a contract with an alternative treatment technology vendor, (*2*) Date for initiating onsite construction or installation of the alternative technology, (*3*) Date for completing onsite construction or installation of the alternative technology, and (*4*) Date for shutting down the CISWI.
(B) Need an extension so you can acquire the services of a commercial waste disposal company before you shut down your CISWI.	(*1*) Date when price quotes will be obtained from commercial disposal companies, (*2*) Date when you will enter into a contract with a commercial disposal company, and (*3*) Date for shutting down the CISWI.

(2) You must shut down no later than by the date two years after promulgation of the CISWI Federal plan in the **Federal Register**.

(3) You must comply with the operator training and qualification requirements and inspection requirements (if applicable) of this subpart by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(4) You must submit a legally binding closure agreement to the Administrator by the date six months after promulgation of the CISWI Federal plan in the **Federal Register**. The closure agreement must specify the date by which operation will cease. The closure date cannot be later than the date 2 years after promulgation of the CISWI Federal plan in the **Federal Register**.

(5) You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 regardless of when you shut down.

§ 62.14575 What must I do if I close my CISWI unit and then restart it?

If you temporarily close your CISWI unit and restart the unit for the purpose of continuing operation of your CISWI unit, then you must follow the requirements in paragraphs (a), (b), or (c) of this section depending on when you plan to come into compliance with the requirements of this subpart. You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 at the time you restart your CISWI unit.

(a) If you plan to continue operation and come into compliance with the requirements of this subpart by the by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, then you must complete the requirements of § 62.14535(a).

(b) If you plan to continue operation and come into compliance with the requirements of this subpart on or before the date two years after promulgation of the CISWI Federal plan in the **Federal Register**, then you must complete the requirements § 62.14535(b). You must have first requested and been granted an extension from the initial compliance date by following the requirements of § 62.14536.

(c) If you restart your CISWI unit after the date one year after promulgation of the CISWI Federal plan in the **Federal Register** and resume operation, but have not previously requested an extension by meeting all of the requirements of § 62.14536, you must meet all of the requirements of § 62.14535(a)(1) through (a)(5) at the time you restart your CISWI unit. Upon restarting your CISWI unit, you must have incorporated all process changes and completed retrofit construction of control devices so that when the affected CISWI unit is brought online, all necessary process changes and air pollution control devices operate as designed.

Waste Management Plan

§ 62.14580 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 62.14585 When must I submit my waste management plan?

You must submit a waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14590 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible, based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Operator Training and Qualification

§ 62.14595 What are the operator training and qualification requirements?

(a) You must have a fully trained and qualified CISWI unit operator accessible at all times when the unit is in operation, either at your facility or able to be at your facility within one hour. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, you must follow the procedures in § 62.14625.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the thirteen subjects listed in paragraphs (c)(1)(i) through (xiii) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (where applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to correct malfunctions or conditions that may lead to malfunction.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(xi) Waste management practices.

(xii) Recordkeeping requirements.

(xiii) Methods to continuously monitor CISWI unit and air pollution control device operating parameters and monitoring equipment calibration procedures (where applicable).

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that can serve as reference material following completion of the course.

§ 62.14600 When must the operator training course be completed?

(a) The operator training course must be completed by the later of the two dates specified in paragraphs (a)(1) and (2) of this section.

(1) The date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(2) Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

(b) You must follow the requirements in § 63.14625 if all qualified operators are temporarily not accessible.

§ 62.14605 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 62.14595(b) or (c).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 62.14595(c)(2).

§ 62.14610 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course of at least 4 hours covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 62.14615 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 62.14610.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 62.14605(a).

§ 62.14620 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all CISWI unit operators that addresses the ten topics described in paragraphs (a)(1) through (10) of this section. You

must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 62.14580 through 62.14590.

(9) Procedures for handling ash.

(10) A list of the wastes burned during the performance test.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each employee who operates your incinerator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the later of the two dates specified in paragraphs (b)(1)(i) through (ii) of this section.

(i) The date 1 year after publication of this final rule in the **Federal Register**.

(ii) Two months after being assigned to operate the CISWI unit.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted no later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of all plant personnel who operate your CISWI unit who have completed review of the information in § 62.14620(a) as required by § 62.14620(b), including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of all plant personnel who operate your CISWI unit who have completed the operator training requirements under § 62.14595, met the criteria for qualification under § 62.14605, and maintained or renewed their qualification under § 62.14610 or § 62.14615. Records must include documentation of training, the dates of the initial refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 62.14625 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within 1 hour), you must meet one of the two criteria specified in paragraphs (a) and (b) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for more than 8 hours, but less than 2 weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in § 62.14620(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 62.14730.

(b) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from the Administrator to continue operation of the CISWI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section. If the Administrator notifies you that your request to continue operation of the CISWI unit is disapproved, the CISWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 62.14595(a).

(ii) You notify the Administrator that a qualified operator is accessible and that you are resuming operation.

Emission Limitations and Operating Limits

§ 62.14630 What emission limitations must I meet and by when?

You must meet the emission limitations specified in Table 1 of this subpart by the applicable final compliance date for your CISWI unit.

§ 62.14635 What operating limits must I meet and by when?

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraph (a)(1)(i) or (ii), as appropriate.

(i) For continuous and intermittent units, maximum charge rate is 110 percent of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is 110 percent of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as 90 percent of the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as 90 percent of the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as 90 percent of the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as 90 percent of the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride emission limitation.

(b) You must meet the operating limits established during the initial performance test on the date the initial performance test is required or completed (whichever is earlier).

(c) If you use a fabric filter to comply with the emission limitations, you must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during any 6-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.

§ 62.14640 What if I do not use a wet scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber, or limit emissions in some other manner, to comply with the emission limitations under § 62.14630, you must petition the Administrator for specific operating limits to be established during the initial performance test and continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by the Administrator. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as additional operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 62.14645 What happens during periods of startup, shutdown, and malfunction?

(a) The emission limitations and operating limits apply at all times except during periods of CISWI unit startup, shutdown, or malfunction as defined in § 62.14840.

(b) Each malfunction must last no longer than three hours.

Performance Testing

§ 62.14650 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) You must document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in § 62.14700(b)(1)) and the types of waste burned during the performance test.

(c) All performance tests must be conducted using the minimum run duration specified in Table 1 of this subpart.

(d) Method 1 of 40 CFR part 60, Appendix A must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of 40 CFR part 60, Appendix A must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of 40 CFR part 60, Appendix A must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 of this section:

$$C_{adj} = C_{meas}(20.9 - 7) / (20.9 - \%O_2) \qquad \text{(Eq. 1)}$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen;

C_{meas} = pollutant concentration measured on a dry basis;

(20.9–7) = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis);

20.9 = oxygen concentration in air, percent; and

$\%O_2$ = oxygen concentration measured on a dry basis, percent.

(g) You must determine dioxins/furans toxic equivalency by following the procedures in paragraphs (g)(1) through (3) of this section.

(1) Measure the concentration of each dioxin/furan tetra- through octa-congener emitted using EPA Method 23.

(2) For each dioxin/furan congener measured in accordance with paragraph (g)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 of this subpart.

(3) Sum the products calculated in accordance with paragraph (g)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

§ 62.14655 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 1 of this subpart.

Initial Compliance Requirements

§ 62.14660 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under 40 CFR 60.8, to determine compliance with the emission limitations in Table 1 of this subpart and to establish operating limits using the procedure in § 62.14635 or § 62.14640. The initial performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 62.14650.

§ 62.14665 By what date must I conduct the initial performance test?

The initial performance test must be conducted no later than 90 days after your final compliance date.

Continuous Compliance Requirements

§ 62.14670 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for particulate matter, hydrogen chloride, and opacity for each CISWI unit as required under 40 CFR 60.8 to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 62.14650.

(b) You must continuously monitor the operating parameters specified in § 62.14635 or established under § 62.14640. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the

established operating limits. Three-hour rolling average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under § 62.14640. Operating limits do not apply during performance tests.

(c) You must only burn the same types of waste used to establish operating limits during the performance test.

§ 62.14675 By what date must I conduct the annual performance test?

You must conduct annual performance tests for particulate matter, hydrogen chloride, and opacity within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§ 62.14680 May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least 3 years, and all performance tests for the pollutant (particulate matter, hydrogen chloride, or opacity) over 3 consecutive years show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no later than 36 months following the previous performance test.

(b) If your CISWI unit continues to meet the emission limitation for particulate matter, hydrogen chloride, or opacity, you may choose to conduct performance tests for these pollutants every third year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for particulate matter, hydrogen chloride, or opacity, you must conduct annual performance tests for that pollutant until all performance tests over a 3-year period show compliance.

§ 62.14685 May I conduct a repeat performance test to establish new operating limits?

(a) Yes. You may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

(b) You must repeat the performance test if your feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

Monitoring

§ 62.14690 What monitoring equipment must I install and what parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitation under § 62.14630, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 2 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 2 of this subpart at all times except as specified in § 62.14695(a).

(b) If you use a fabric filter to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs (b)(1) through (8) of this section.

(1) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(2) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(3) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(4) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(5) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(6) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(7) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(c) If you are using something other than a wet scrubber to comply with the emission limitations under § 62.14630, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 62.14640.

§ 62.14695 Is there a minimum amount of monitoring data I must obtain?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the CISWI unit is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

Recordkeeping and Reporting

§ 62.14700 What records must I keep?

You must maintain the 13 items (as applicable) as specified in paragraphs (a) through (m) of this section for a period of at least 5 years:

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (6) of this section:

(1) The CISWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For affected CISWI units that establish operating limits for controls other than wet scrubbers under § 62.14640, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) If a fabric filter is used to comply with the emission limitations, you must record the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of

operating time during each 6-month period that the alarm sounds, calculated as specified in § 62.14635(c).

(c) Identification of calendar dates and times for which monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which data show a deviation from the operating limits in table 2 of this subpart or a deviation from other operating limits established under § 62.14640 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations.

(g) Records showing the names of CISWI unit operators who have completed review of the information in § 62.14620(a) as required by § 62.14620(b), including the date of the initial review and all subsequent annual reviews.

(h) Records showing the names of the CISWI operators who have completed the operator training requirements under § 62.14595, met the criteria for qualification under § 62.14605, and maintained or renewed their qualification under § 62.14610 or § 62.14615. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(i) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(j) Records of calibration of any monitoring devices as required under § 62.14690.

(k) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(l) The information listed in § 62.14620(a).

(m) On a daily basis, keep a log of the quantity of waste burned and the types of waste burned (always required).

§ 62.14705 Where and in what format must I keep my records?

All records must be available onsite in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 62.14710 What reports must I submit?

See Table 4 of this subpart for a summary of the reporting requirements.

§ 62.14715 When must I submit my waste management plan?

You must submit the waste management plan no later than the date six months after promulgation of the CISWI Federal plan in the **Federal Register**.

§ 62.14720 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 62.14660, as applicable.

(b) The values for the site-specific operating limits established in § 62.14635 or § 62.14640.

(c) If you are using a fabric filter to comply with the emission limitations, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 62.14690(b).

§ 62.14725 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 62.14720. You must submit subsequent reports no more than 12 months following the previous report. As with all other requirements in this subpart, the requirement to submit an annual report does not modify or replace the operating permit requirements of 40 CFR parts 70 and 71.

§ 62.14730 What information must I include in my annual report?

The annual report required under § 62.14725 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 62.14735, 62.14740, and 62.14745.

(a) Company name and address.

(b) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 62.14635 or § 62.14640.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the operating limits was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 62.14700(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 62.14680(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 62.14680(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours, but less than 2 weeks.

§ 62.14735 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if the bag leak detection system alarm sounds for more than 5 percent of the operating time for any 6-month reporting period, or if a performance test was conducted that deviated from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 62.14740 What must I include in the deviation report?

In each report required under § 62.14735, for any pollutant or

parameter that deviated from the emission limitations or operating limits specified in this subpart, include the six items described in paragraphs (a) through (f) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Duration and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitoring downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

§ 62.14745 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for two weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Within ten days of each deviation, you must submit a notification that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from the Administrator to continue operation of the CISWI unit.

(b) If your unit was shut down by the Administrator, under the provisions of § 62.14625(b)(2), due to a failure to provide an accessible qualified operator, you must notify the Administrator that you are resuming operation once a qualified operator is accessible.

§ 62.14750 Are there any other notifications or reports that I must submit?

Yes. You must submit notifications as provided by 40 CFR 60.7.

§ 62.14755 In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§ 62.14760 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See 40 CFR 60.19(c) for procedures to seek approval to change your reporting date.

Air Curtain Incinerators that Burn 100 Percent Wood Wastes and Clean Lumber

§ 62.14765 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are different from conventional combustion devices which typically have enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

§ 62.14770 When must I achieve final compliance?

If you plan to continue operating, then you must achieve final compliance by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**. It is unlawful for your air curtain incinerator to operate after the date one year after promulgation of the CISWI Federal plan in the **Federal Register** if you have not achieved final compliance. An air curtain incinerator that continues to operate after the date one year after promulgation of the CISWI Federal plan in the **Federal Register** without being in compliance is subject to penalties.

§ 62.14795 How do I achieve final compliance?

For the final compliance, you must complete all equipment changes and retrofit installation control devices so that, when the affected air curtain incinerator is placed into service, all necessary equipment and air pollution control devices operate as designed and meet the opacity limits of § 62.14815.

§ 62.14805 What must I do if I close my air curtain incinerator and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in this subpart, you must achieve final compliance by the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(b) If you close your incinerator but will restart it after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**, you must have completed any needed emission control retrofits and meet the opacity limits of § 62.14815 on the date your incinerator restarts operation.

(c) You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 at the time you restart your air curtain incinerator.

§ 62.14810 What must I do if I plan to permanently close my air curtain incinerator and not restart it?

If you plan to permanently close your incinerator rather than comply with this subpart, you must submit a closure notification, including the date of closure, to the Administrator by the date by the 180 days after promulgation of the CISWI Federal plan in the **Federal Register**. You must meet the title V operating permit requirements of §§ 62.14830 and 62.14835 regardless of when you shut down.

§ 62.14815 What are the emission limitations for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) After the date the initial test for opacity is required or completed (whichever is earlier), you must meet the limitations in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times, and each malfunction must not exceed 3 hours.

§ 62.14820 How must I monitor opacity for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Use Method 9 of 40 CFR part 60, Appendix A to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8 no later than 90 days after the date one year after promulgation of the CISWI Federal plan in the **Federal Register**.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 62.14825 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent wood wastes and clean lumber?

(a) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(b) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(c) Submit an initial report no later than 60 days following the initial opacity test that includes the information specified in paragraphs (c)(1) and (2) of this section.

(1) The types of materials you plan to combust in your air curtain incinerator.

(2) The results (each 6-minute average) of the initial opacity tests.

(d) Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of 5 years.

Title V Requirements

§ 62.14830 Does this subpart require me to obtain an operating permit under title V of the Clean Air Act?

Yes. If you are subject to this subpart, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements specified in 40 CFR 62.14525(a)–(h) and (j)–(o) and all of the requirements specified in 40 CFR 62.14531.

§ 62.14835 When must I submit a title V permit application for my existing CISWI unit?

(a) If your existing CISWI unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted not later than the date 36 months after promulgation of 40 CFR part 60, subpart DDDD (December 1, 2003), or by the effective date of the applicable State, Tribal, or Federal operating permits program, whichever is later. For any existing CISWI unit not subject to an earlier application deadline, this final application deadline applies regardless of when this Federal plan is effective, or when the relevant State or Tribal section 111(d)/129 plan is approved by EPA and becomes effective. *See* sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act.

(b) A ''complete'' title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. *See* sections 503(d) and 502(a) of the Clean Air Act; 40 CFR 70.7(b) and 71.7(b).

Definitions

§ 62.14840 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act, subparts A and B of part 60 and subpart A of this part 62.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or Administrator of a State Air Pollution Control Agency.

Agricultural waste means vegetative agricultural materials such as nut and grain hulls and chaff (*e.g.*, almond, walnut, peanut, rice, and wheat), bagasse, orchard prunings, corn stalks, coffee bean hulls and grounds, and other vegetative waste materials generated as a result of agricultural operations.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators are different from conventional combustion devices which typically have enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

Auxiliary fuel means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.*, baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Chemotherapeutic waste means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Commercial and industrial solid waste incineration (CISWI) unit means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

Commercial and industrial waste, for the purposes of this subpart, means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

Contained gaseous material means gases that are in a container when that container is combusted.

Cyclonic barrel burner means a combustion device for waste materials that is attached to a 55 gallon, open-head drum. The device consists of a lid, which fits onto and encloses the drum, and a blower that forces combustion air into the drum in a cyclonic manner to enhance the mixing of waste material and air.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or

operator qualification and accessibility requirements;

(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 limitation, operating limit, or operator qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless or whether or not such failure is permitted by this subpart.

Dioxins/furans means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Discard means, for purposes of this subpart and 40 CFR part 60, subpart DDDD, only, burned in an incineration unit without energy recovery.

Drum reclamation unit means a unit that burns residues out of drums (*e.g.*, 55 gallon drums) so that the drums can be reused.

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Low-level radioactive waste means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Modification or *modified CISWI unit* means a CISWI unit you have changed later than promulgation of the final CISWI emission guidelines in 40 CFR part 60, subpart DDDD and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

(2) Any physical change in the CISWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Particulate matter means total particulate matter emitted from CISWI units as measured by Method 5 or Method 29 of 40 CFR part 60, Appendix A.

Parts reclamation unit means a unit that burns coatings off parts (*e.g.*, tools, equipment) so that the parts can be reconditioned and reused.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Rack reclamation unit means a unit that burns the coatings off racks used to hold small items for application of a coating. The unit burns the coating overspray off the rack so the rack can be reused.

Reconstruction means rebuilding a CISWI unit and meeting two criteria:

(1) The reconstruction begins on or after promulgation of the final CISWI emission guidelines in 40 CFR part 60, subpart DDDD.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the CISWI unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the CISWI unit used to calculate these costs, see the definition of CISWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). For purposes of this subpart and 40 CFR part 60, subpart DDDD, only, solid waste does not include the waste burned in the fifteen types of units described in 40 CFR 60.2555 of subpart DDDD and § 62.14525 of this subpart.

Standard conditions, when referring to units of measure, means a temperature of 68°F (20°C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the activation of the system and the first charge to the unit.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart DDDD.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

TABLE 1 OF SUBPART III OF PART 62.—EMISSION LIMITATIONS

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
Cadmium	0.004 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60)
Carbon monoxide	157 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 10, 10A, or 10B, of appendix A of part 60)
Dioxins/furans (toxic equivalency basis)	0.41 nanograms per dry standard cubic meter.	3-run average (4 hour minimum sample time per run).	Performance test (Method 23 of appendix A of part 60)
Hydrogen chloride	62 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 26A of appendix A of part 60)
Lead	0.04 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60)
Mercury	0.47 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 29 of appendix A of part 60)
Opacity	10 percent	6-minute averages	Performance test (Method 9 of appendix A of part 60)
Oxides of nitrogen	388 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Methods average 7, 7A, 7C, 7D, or 7E of appendix A of part 60)
Particulate matter	70 milligrams per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Performance test (Method 5 or 29 of appendix A of part 60)
Sulfur dioxide	20 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Performance test (Method 6 or 6c of appendix A of part volume 60)

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 2 OF SUBPART III OF PART 62.—OPERATING LIMITS FOR WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor using these minimum frequencies		
		Data measurement	Data recording	Averaging time
Charge rate	Maximum charge rate	Continuous	Every hour	1. Daily (batch units). 2. 3-hour rolling (continuous and intermittent units).[a]
Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes.	3-hour rolling.[a]
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes.	3-hour rolling.[a]
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes.	3-hour rolling [a]

[a] Calculated each hour as the average of the previous 3 operating hours.

TABLE 3 OF SUBPART III OF PART 62.—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
A. 2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
B. 12,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
C. 1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
D. 1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
E. 12,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
F. 1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
G. 0ctachlorinated dibenzo-p-dioxin	0.001
H. 2,3,7,8-tetrachlorinated dibenzofuran	0.1
I. 2,3,4,7,8-pentachlorinated dibenzofuran	0.5
J.1,2,3,7,8-pentachlorinated dibenzofuran	0.05
K. 1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
L. 1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
M. 1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
N. 2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
O. 1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
P. 1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
Q. 0ctachlorinated dibenzofuran	0.001

TABLE 4 OF SUBPART III OF PART 62.—SUMMARY OF REPORTING REQUIREMENTS

Report	Due Date	Contents	Reference
A. Waste Management Plan.	No later than the date 6 months after publication of the final rule the Federal Register.	Waste management plan	§ 62.14715.
B. Initial Test Report	No later than 60 days following the performance test.	1. Complete test report for the initial performance test. 2. The values for the site-specific operating limits 3. Installation of bag leak detection systems for fabric filters.	§ 62.14720.
C. Annual Report	No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	1. Name and address 2. Statement and signature by responsible official 3. Date of report 4. Values for the operating limits 5. If no deviations or malfunctions were reported, a statement that no deviations occurred during reporting period. 6. Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported. 7. Information for deviations or malfunctions recorded under § 62.14700(b)(6) and (c) through (e). 8. If a performance test was conducted during the reporting period, the results of the test. 9. If a performance test was not conducted during the reporting period, a statement that the requirements of § 62.14680(a) or (b) were met. 10. Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks.	§§ 62.14725 and 62.14730 Subsequent reports are to be submmitted no moer than 12 months following the previous report.
D. Emission Limitation or Operating Limit Deviation Report.	By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	1. Dates and times of deviations 2. Averaged and recorded data for these dates 3. Duration and causes for each deviation and the corrective actions taken. 4. Copy of operating limit monitoring data and any test reports. 5. Dates, times, and causes for monitor downtime incidents. 6. Whether each deviation occurred during a period of startup, shutdown, or malfunction.	§§ 62.14735 and 62.14740.
E. Qualified Operator Deviation Notification.	Within 10 days of deviation.	1. Statement of cause of deviation 2. Description of efforts to have an accessible qualified operator. 3. The date a qualified operator will be accessible.	§ 62.14745(a)(1).
F. Qualified Operator Deviation Status Report.	Every 4 weeks following deviation.	1. Description of efforts to have an accessible qualified operator. 2. The date a qualified operator will be accessible. 3. Request for approval to continue operation	§ 62.14745(a)(2).
G. Qualified Operator Deviation Notification of Resumed Operation.	Prior to resuming operation.	Notification that you are resuming operation	§ 62.14745(b).

[a] This table is only a summary, see the referenced sections of the rule for the complete requirements.

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Eurocopter France; comments due by 12-2-02; published 10-2-02 [FR 02-24989]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
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Sikorsky; comments due by 12-2-02; published 10-3-02 [FR 02-24994]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness standards:
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Trim systems and protective breathing equipment; comments due by 12-2-02; published 10-2-02 [FR 02-25055]
Class D airspace; comments due by 12-1-02; published 10-24-02 [FR 02-26582]
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Large cigars; elimination of statistical classes; comments due by 12-5-02; published 11-5-02 [FR 02-27973]

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Wine; labeling and advertising—

Fruit and agricultural wines; amelioration; technical amendments; comments due by 12-2-02; published 10-3-02 [FR 02-24924]

TREASURY DEPARTMENT

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Highway vehicle; definition; comments due by 12-4-02; published 8-16-02 [FR 02-20908]

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Tax shelter disclosure statements; modification; cross-reference; comments due by 12-2-02; published 10-22-02 [FR 02-26725]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 1210/P.L. 107–292
Native American Housing Assistance and Self-Determination Reauthorization Act of 2002 (Nov. 13, 2002; 116 Stat. 2053)

S. 2690/P.L. 107–293
To reaffirm the reference to one Nation under God in the Pledge of Allegiance. (Nov. 13, 2002; 116 Stat. 2057)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–048–00001–1)	9.00	Jan. 1, 2002
3 (1997 Compilation and Parts 100 and 101)	(869–048–00002–0)	59.00	[1] Jan. 1, 2002
4	(869–048–00003–8)	9.00	[4] Jan. 1, 2002
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1200–End, 6 (6 Reserved)	(869–048–00006–2)	58.00	Jan. 1, 2002
7 Parts:			
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27–52	(869–048–00008–9)	47.00	Jan. 1, 2002
53–209	(869–048–00009–7)	36.00	Jan. 1, 2002
210–299	(869–048–00010–1)	59.00	Jan. 1, 2002
300–399	(869–048–00011–9)	42.00	Jan. 1, 2002
400–699	(869–048–00012–7)	57.00	Jan. 1, 2002
700–899	(869–048–00013–5)	54.00	Jan. 1, 2002
900–999	(869–048–00014–3)	58.00	Jan. 1, 2002
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1940–1949	(869–048–00019–4)	53.00	Jan. 1, 2002
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
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11	(869–048–00029–1)	34.00	Jan. 1, 2002
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CFR Index and Findings Aids	(869–048–00047–0)	59.00	Jan. 1, 2002
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2001, through April 1, 2002. The CFR volume issued as of April 1, 2001 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.