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Presidential Documents

Title 3—

The President

Proclamation 7640 of January 15, 2003

Religious Freedom Day, 2003

By the President of the United States of America

A Proclamation

Each year on January 16, we celebrate Religious Freedom Day in commemoration of the passage of the Virginia Statute for Religious Freedom by the Virginia General Assembly, which occurred on this day in 1786. Drafted by Thomas Jefferson, this historic law provided the inspiration and the framework for the religious freedom clauses in the First Amendment to the United States Constitution.

The religious freedom provisions of our Constitution—the Establishment Clause and the Free Exercise Clause—open the first of the ten amendments that make up the Bill of Rights. Because the Framers placed the guarantee of religious freedom before other cherished rights, religious liberty in America is often called the first freedom. The right to have religious beliefs and to freely practice such beliefs are among the most fundamental freedoms we possess. James Madison once said that ''the Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right.''

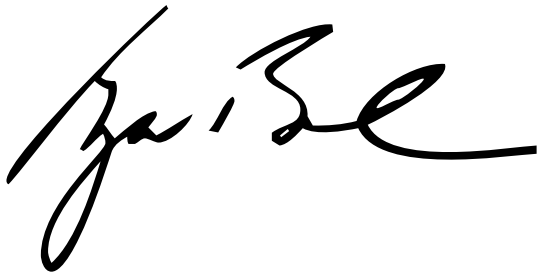
Our Founding Fathers recognized that religious freedom is a right we must protect with great vigilance. We must continue our efforts to uphold justice and tolerance and to oppose prejudice; and we must be resolved to countering any means that infringe on religious freedom.

Religious faith has inspired many of our fellow citizens to help build a better Nation. In America today, people of faith continue to wage a determined campaign to meet needs and fight suffering. Through the efforts of the White House Office of Faith-Based and Community Initiatives, my Administration has been working to ensure that faith-inspired organizations do not face discrimination simply because of their religious orientation. I recently signed an Executive Order to ensure equal treatment for faith-based charities that are offering hope to those in need.

As we celebrate the freedom of faith in America, we also recognize that there are many people around the world who do not enjoy such freedoms. The right to believe and express one's beliefs in words and practice is a right that should belong to all people. Through the Department of State's Office of International Religious Freedom, my Administration has been working to call attention to religious persecution and to encourage our allies, friends, and trading partners to provide and protect this fundamental human right for all people around the world. By working together to secure religious freedom around the world, we can create a better future for people of all faiths.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 2003, as Religious Freedom Day. I encourage all Americans to reflect on the great blessing of religious freedom and to endeavor to preserve this freedom for future generations, and to commemorate this day through appropriate events and activities in homes, schools, and places of worship.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



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Rules and Regulations

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

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FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 110

[Notice 2003–2]

BCRA Technical Corrections

AGENCY: Federal Election Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Commission published technical amendments to its regulations on December 26, 2002, entitled ''BCRA Technical Amendments.'' These amendments became effective upon publication. However, some of the amendments changed regulations that were promulgated but had not become effective as of December 26, 2002, and therefore could not take effect. Thus, the Commission is re-promulgating the technical amendments that did not take effect with the original BRCA technical amendments. Further information is provided in the supplementary information that follows.

EFFECTIVE DATES: The effective date for the revisions to 11 CFR 104.3(d)(1), introductory text, is December 31, 2002. The effective date for revisions to 11 CFR 110.19(e) is January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mai T. Dinh, Acting Assistant General Counsel, 999 E Street, NW., Washington DC, 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission promulgated a series of regulations to implement the Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law 107–155, 116 Stat. 81 (March 27, 2002).[1] As part of that effort, the Commission recently published technical amendments to its regulations to correct obsolete citations and typographical errors. *See* BCRA Technical Amendments Final Rule, 67 FR 78679 (Dec. 26, 2002). While these technical amendments became effective on December 26, 2002, the final rule amended sections that had been promulgated but had not yet been made effective as of that date. The affected sections are 11 CFR 104.3(d)(1) and 110.19(e). Additionally, the changes to the amendments to 11 CFR 113.1(g)(5) and (6), and 114.10(e) that were part of the BCRA Technical Amendments Final Rule will not be made because they are no longer necessary.[2] Therefore, the Commission is publishing and establishing the correct effective dates for the revisions to 11 CFR 104.3(d)(1) and 110.19(e) in this final rule.

Because the amendments published herein are merely technical and nonsubstantive, they are not a substantive rule requiring notice and comment under Administrative Procedure Act, 5 U.S.C. 553. Under the ''good cause'' exception in 5 U.S.C. 553(b)(B) and 553(d)(3), these technical amendments do not need to wait the 30 days after publication in the **Federal Register** to become effective. Rather, the effective date for the revisions to 11 CFR 104.3(d)(1) is December 31, 2002; and the effective date for 11 CFR 110.19(e) is January 1, 2003.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

This final rule does not have a significant economic impact on a substantial number of small entities. The amendments in this final rule are all technical and nonsubstantive in nature and do not have any economic impact on any entity subject to the underlying regulations.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, subchapters A of chapter 1 of title 11 of the *Code of Federal Regulations* are amended as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), and 439a.

§ 104.3 [Amended]

2. In the table below, for each section indicated in the left column, remove the citation indicated in the middle column, and replace it with the citation indicated in the right column:

Section	Remove	Add
104.3(d)(1), introductory text	100.7(b)(11)	100.82(a) through (d).
104.3(d)(1), introductory text	100.8(b)(12)	100.142(a) through (d).

[1] *See* the following rulemakings: Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft, 67 FR 49064 (July 29, 2002); Final Rules on Reorganization of Regulations on Contributions and Expenditures, 67 FR 50582 (Aug. 5, 2002); Final Rules on Corrdinated and Independent expenditures, 67 FR (Jan. 3, 2003); Final Rules on Electioneering Communications, 67 FR 65212 (October 23, 2002); Final Rules on Contribution Limitations and Prohibitions, 67 FR 69928 (Nov. 19, 2002).

[2] The appropriate changes to 11 CFR 113.1(g)(5) and (6), and 114.10(e)(2) have already been made as part of the Final Rules on Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76979 (Dec. 13, 2002), and Final Rules on Electioneering Communications, 67 FR at 65212, respectively.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441k.

§ 110.19 [Amended]

4. In the table below, for each section indicated in the left column, remove the citation or phrase indicated in the middle column, and replace it with the citation or phrase indicated in the right column:

Section	Remove	Add
110.19(e) paragraph heading	maintain, finance	finance, maintain.
110.19(e)	maintain, finance	finance, maintain.

Dated: January 14, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–1184 Filed 1–21–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–80–AD; Amendment 39–13019; AD 2003–02–03]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 65, 90, 99, 100, 200, and 300 Series, and Model 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) 65, 90, 99, 100, 200, and 300 series, and Model 2000 airplanes. This AD requires you to install new exterior operating instruction placards for the airstair door and emergency exits. This AD is the result of Raytheon improving the visibility and understandability of the door operating instruction placards. This was done as a result of difficulty opening the emergency exits of a similar type design airplane. The actions specified by this AD are intended to assure that clear and complete operating instructions are visible for opening the airstair door and emergency exits. If the operating instructions are not visible or understandable, this could result in the inability to open the airstair door or emergency exits during an emergency situation.

DATES: This AD becomes effective on March 7, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 7, 2003.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–80–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? FAA believes that the instructions for opening the airstair door and emergency exits are either not visible or not easy to understand on Raytheon 65, 90, 99, 100, 200, and 300 series, and Model 2000 airplanes. This is based on an accident that resulted in the issuance of AD 97–04–02. AD 97–04–02 was later superseded by AD 98–21–20 to incorporate more visible and understandable instructions.

What is the potential impact if FAA took no action? If the exterior door operating instruction placards are not visible or understandable, this could result in the inability to open the airstair door or emergency exits during an emergency situation.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon 65, 90, 99, 100, 200, and 300 series, and Model 2000 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 9, 2002 (67 FR 51791). The NPRM proposed to require you to install new exterior operating instruction placards for the airstair door and emergency exits.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: AD Is Unjustified

What is the commenter's concern? The commenter believes that in the accident that resulted in the earlier ADs, the damage to the airplane prevented the doors from opening. Therefore, the commenter believes that if the new placards had been present in this situation, they still would not have prevented injuries or loss of life. We infer that the commenter wants the NPRM withdrawn based on no compelling evidence that the presence of the placards addresses the unsafe condition.

What Is FAA's response to the concern? We do not concur. In an emergency situation, exiting the airplane is of the utmost importance, especially if the postcrash scenario includes a cabin fire. The cabin crew and/or passengers may become incapacitated. Therefore, the exterior emergency exit door operating instructions must be extremely clear and complete so that any person will be able to open the exit door.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 2: Placards Are Not Durable

What is the commenter's concern? The commenter states that the placards supplied by Raytheon do not adhere to the airplane surface properly. The placards often begin to peel-off either in flight or while washing the airplane. We infer that the commenter wants the NPRM withdrawn because the placards will eventually come off on their own.

What is FAA's response to the concern? We are aware that durability and adherence of the placards to the airplane surface may be a problem. However, it is not a valid reason for withdrawing the NPRM. The owners/

operators of the affected airplanes may choose to apply one or two coats of clear coating to seal the edges of the placard.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 3: Placards Degrade the Airplane's Appearance

What is the commenter's concern? The commenter states that the affected airplanes are chiefly used in private, charter, and corporate service where appearance is especially important to the owners/operators. The commenter states that the placards are out of proportion to the size of the airplanes, look very ugly, and the contrasting colors of the placards cause a problem because of stripe locations on the airplane's paint job. We infer that the commenter wants the NPRM withdrawn because the placards degrade the airplane's appearance.

What is FAA's response to the concern? We understand that appearance of the aircraft is a key element for owners/operators. However, cosmetic issues cannot be given higher priority than addressing the unsafe condition and exiting the airplane in an emergency situation.

We are not changing the final rule AD action based on this comment.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

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

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

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 3,587 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120	Approximately $190 per airplane	$120 + $190 = $310	$310 × 3,587 = $1,111,970.

The manufacturer will provide warranty credit for labor and parts to the extent noted under MANPOWER and MATERIAL in Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002.

Compliance Time of This AD

What is the compliance time of this AD? The compliance time of this AD is ''within the next 200 hours time-in-service (TIS) after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first.''

Why is the compliance time of this AD presented in both hours TIS and calendar time? The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. Airplane operation varies among operators. For example, one operator may operate the airplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this AD should be specified in both hours time-in-service (TIS) and calendar time in order to assure this condition is not allowed to go uncorrected over time.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–02–03 Raytheon Aircraft Company: Amendment 39–13019; Docket No. 2000–CE–80–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) 65–90, 65–A90, B90, C90, and C90A	LJ–1 through LJ–1530.
(2) 65–A90–1 (U–21A)	LM–1 through LM–125.
(3) 65–A90–1 (U–21G)	LM–126 through LM–141.
(4) 65–A90–2 (RU–21B)	LS–1 through LS–3.
(5) 65–A90–3 (RU–21C)	LT–1 and LT–2.
(6) 65–A90–4 (RU–21E)	LU–1 through LU–16.
(7) E90	LW–1 through LW–347.
(8) F90	LA–2 through LA–236.

Model	Serial Nos.
(9) H90 (T–44A)	LL–1 through LL–61.
(10) 99, 99A, A99A, B99, and C99	U–1 through U–239.
(11) 100 and A100	B–1 through B–94 and B–100 through B–247.
(12) A100 (U–21F)	B–95 through B–99.
(13) A100–1 (U–21J)	BB–3 through BB–5.
(14) A200 (C–12A) and (C–12C)	BC–1 through BC–75 and BD–1 through BD–30.
(15) A200C (UC–12B)	BJ–1 through BJ–66.
(16) A200CT (C–12D)	BP–1, BP–22, and BP–24 through BP–51.
(17) A200CT (C–12F)	BP–52 through BP–63.
(18) A200CT (FWC–12D)	BP–7 through BP–11.
(19) A200CT (RC–12D)	GR–1 through GR–12.
(20) A200CT (RC–12G)	FC–1 through FC–3.
(21) A200CT (RC–12H)	GR–14 through GR–19.
(22) A200CT (RC–12K)	FE–1 through FE–9.
(23) A200CT (RC–12P)	FE–25 through FE–31, FE–33, and FE–35.
(24) A200CT (RC–12Q)	FE–32, FE–34, and FE–36.
(25) B100	BE–1 through BE–137.
(26) 200 and B200	BB–2, BB–6 through BB–1313, BB–1315 through BB–1384, and BB–1389 through BB–1662.
(27) 200C and B200C	BL–1 through BL–72, and BL–124 through BL–140.
(28) B200C (C–12F)	BL–73 through BL–112, BL–118 through BL–123, and BP–64 through BP–71.
(29) B200C (C–12R)	BW–1 through BW–29.
(30) B200C (UC–12F)	BU–1 through BU–10.
(31) B200C (UC–12M)	BV–1 through BV–10.
(32) 200CT and B200CT	BN–1 through BN–4.
(33) 200T and B200T	BT–1 through BT–38, and BB–1314.
(34) 300	FA–1 through FA–230, and FF–1 through FF–19.
(35) B300	FL–1 through FL–252.
(36) B300C	FM–1 through FM–9, and FN–1.
(37) 2000	NC–4 through NC–53.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to assure that clear and complete operating instructions are visible for opening the airstair door and emergency exits. If the operating instructions are not visible or understandable, this could result in the inability to open the airstair door or emergency exits during an emergency situation.

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

Actions	Compliance	Procedures
Modify the exterior door operating procedures by incorporating the applicable kit as specified in the service bulletin.	Within the next 200 hours time-in-service (TIS) after March 7, 2003 (the effective date of this AD) or within the next 12 calendar months after the effective date of this AD, whichever occurs first.	In accordance with the applicable kit instructions as specified in the Accomplishment Instructions section in Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002. Use Paragraph (7) of the Accomplishment Instructions section in Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002, to accomplish this action on the Model 2000 airplanes.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 52–3096, Rev. 1, Revised: June, 2002, including Accomplishment Kit Nos. 101–4080–1, 101–4310–1, 101–4310–3, 90–4119–1, and 99–4032–1. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the *Office of the Federal*

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on March 7, 2003.

Issued in Kansas City, Missouri, on January 8, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–676 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–27]

Establishment of Class D Airspace; Shaw AFB, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Shaw AFB, SC. Shaw Radar Approach Control (RAPCON) is closed daily from 0330 UTC to 1100 UTC. Shaw AFB Airport Traffic Control Tower (ATCT) is open continuously. Therefore, when the RAPCON is closed Class D airspace must be established for the ATCT. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class D airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of the airport.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On December 2, 2002, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class D airspace at Shaw AFB, SC, (67 FR 71507). Class D airspace designations for airspace areas extending upward from the surface of the earth 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 designations listed in this document will be published subsequently in the Order.

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.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Shaw AFB, SC.

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. It, therefore, (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

In consideration of the foregoing, 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 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; 14 CFR 11.69.

§ 71.1 [Amended]

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.

* * * * *

ASO SC D Shaw AFB, SC [New]

Shaw AFB, SC

(Lat. 33°58′23″ N, long. 80°28′22″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.4-mile radius of the Shaw AFB, excluding that airspace contained within Restricted Area R–6002 when it is in use. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, GA, on January 7, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–1315 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2575

RIN 1210–AA95

Final Rule Relating to Adjustment of Civil Monetary Penalties

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule that adjusts the civil monetary penalties under title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), pursuant to the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), as amended by the Debt Collection Improvement Act of 1996 (Act). The Act amended the 1990 Act to require generally the adjustment of civil monetary penalties for inflation no later than 180 days after the enactment of the Act, and at least once every four years thereafter, in accordance with the guidelines specified in the 1990 Act, as amended. The final rule affects employee benefit plans, plan administrators, plan sponsors, fiduciaries of employee benefit plans, plan participants and beneficiaries, and other persons subject to the civil monetary penalties under title I of ERISA.

DATES: This final rule is effective on March 24, 2003, and applies only to violations occurring after March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and

Interpretations, Pension and Welfare Benefits Administration, (202) 219–8515. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Section 31001(s) of the Debt Collection Improvement Act of 1996 (Act), Pub. L. 104–134, 110 Stat. 1321–373, amended section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Pub. L. 101–410, 104 Stat. 890, to require, with certain exceptions, by a regulation published in the **Federal Register**, that each civil monetary penalty (CMP) be adjusted once every four years in accordance with guidelines specified in the amendment. The Act specifies that any such increase in a CMP shall apply only to violations that occur after the date the increase takes effect. The term ''civil monetary penalty'' is defined in the 1990 Act to mean any penalty, fine or other sanction that is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law; and is assessed or enforced by an agency pursuant to Federal law; and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

Only CMPs that are specified by statute or regulation in dollar amounts are adjusted under the 1990 Act, as amended. CMPs that are specified as percentages are not adjusted. The first adjustment to the CMPs under title I of ERISA was published in the **Federal Register** on July 29, 1997 (62 FR 40696), for incorporation into subpart E of part 2570 of chapter XXV of title 29 of the Code of Federal Regulations (CFR). These regulatory provisions were redesignated and transferred to subpart A of part 2575 of chapter XXV of title 29 of the CFR on August 3, 1999. *See* 64 FR 42246.

The table set forth below, entitled ''Inflation Adjustment of Civil Monetary Penalties Under Title I of ERISA—2003'' (table) contains a list of civil penalties under title I of ERISA for which a determination must be made as to whether an inflation adjustment is mandated by the 1990 Act, as amended. The statutory citations for each of the CMPs under title I of ERISA that are subject to adjustment are set forth in columns (A) and (B) of the table.[1] Column (C) briefly describes the nature of the violations associated with these citations. Column (D) of the table indicates the dollar amount of each CMP to be adjusted, and column (E) sets forth the year that each penalty was established by law or last adjusted. Columns (F), (G), (H), (I), and (J) contain the intermediate results of applying the series of steps mandated by the 1990 Act, as amended. Reference should be made to column (K) of the table to determine the effect of the dollar amounts of the final penalty adjustments by the rule contained in this document pursuant to the requirements of the 1990 Act, as amended.

INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES UNDER TITLE I OF ERISA—2003

(A) U.S. Code Citation	(B) ERISA Title I Section	(C) Nature of Violation	(D) Penalty Amount to be Adjusted	(E) Year Penalty Last Set or Adjusted	(F) CPI–U for Col. E year	(G) Penalty After Raw Adjustment = Col. D × (538.9*/Col F)	(H) Unrounded Penalty Increase	(I) Round to the Nearest	(J) Rounded Penalty Increase	(K) New Penalty Amount = Col. (D) + Col. (J)
29 U.S.C. 1059(b)	209(b)	Failure to furnish or maintain records.	$11 per employee.	1997	480.2	12.34	1.34	$10	$0	$11 per employee.
29 U.S.C. 1132(c)(1)(A).	502(c)(1)(A)	Failure to notify plan participants of group health plan benefits under COBRA.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
		Failure to notify participants and beneficiaries of asset transfer.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
29 U.S.C. 1132(c)(1)(B).	502(c)(1)(B)	Refusal to provide required information in a timely manner.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
29 U.S.C. 1132(c)(2).	502(c)(2)	Failure or refusal to file an annual report.	Up to $1,100 a day.	1997	480.2	1,234.46	134.46	1,000	0	Up to $1,100 a day.
29 U.S.C. 1132(c)(3).	502(c)(3)	Failure to notify certain participants and beneficiaries of a failure to meet minimum funding requirements.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.
		Failure to notify certain persons of a transfer of excess pension assets to health account.	Up to $110 a day.	1997	480.2	123.45	13.45	100	0	Up to $110 a day.

[1] The section 502(c)(7) civil penalty, that was added to title I of ERISA by the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745), is not included in the Table. Under this provision, the Secretary may assess a civil penalty of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to a participant or beneficiary in accordance with ERISA section 101(i). The methodology of the 1990 Act, as amended, could not result in a cost-of-living adjustment for CMPs enacted in 2002, for purposes of this final rule, by virtue of how the adjustment is calculated. *See* the discussion following the table, including footnote 2.

INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES UNDER TITLE I OF ERISA—2003—Continued

(A) U.S. Code Citation	(B) ERISA Title I Section	(C) Nature of Violation	(D) Penalty Amount to be Adjusted	(E) Year Penalty Last Set or Adjusted	(F) CPI–U for Col. E year	(G) Penalty After Raw Adjustment = Col. D × (538.9*/Col F)	(H) Unrounded Penalty Increase	(I) Round to the Nearest	(J) Rounded Penalty Increase	(K) New Penalty Amount = Col. (D) + Col. (J)
29 U.S.C. 1132(c)(5).	502(c)(5)	Failure or refusal to file information required under section 101(g).	Up to $1,000 a day.	1996	469.5	1,147.82	147.82	100	100	Up to $1,100 a day.
29 U.S.C. 1132(c)(6).	502(c)(6)	Failure to furnish documents under section 104(a)(6) upon request.	Up to $100 a day.	1997	480.2	112.22	12.22	10	10	Up to $110 a day.
			But not >$1,000 per request.	1997	480.2	1,122.24	122.24	100	100	But not >$1,100 per request.

*The value of the CPI–U average for all U.S. cities in June 2002 using 1967 as the base year was 538.9.

Specifically, the 1990 Act, as amended, provides that the required inflation adjustment shall be determined by increasing the maximum CMP amount or the range of maximum and minimum CMP amounts, as applicable, for each CMP by a cost-of-living adjustment (COLA). The term ''cost-of-living adjustment'' is defined in the Act as the percentage for each CMP by which the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted by law. The term ''Consumer Price Index'' is defined in the 1990 Act, as amended, to mean the Consumer Price Index for All-Urban Consumers published by the U.S. Department of Labor.

Accordingly, to calculate the COLA it is necessary to divide the CPI for June of the calendar year preceding the adjustment [2] by the CPI for June of the calendar year in which the CMP was last set by law or adjusted for inflation. In order to calculate the raw inflation adjustment, it is necessary to multiply the penalty amount to be adjusted by the relevant COLA. *See* column (G) of the table. The subtraction of the penalty amount to be adjusted from this product yields the unrounded penalty increase. *See* column (H) of the table.

Section 5 of the 1990 Act, as amended, sets forth the manner in which inflation adjustments must be rounded. Specifically, any increase in the maximum CMP or the range of maximum and minimum CMPs, as applicable, must be rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

These amounts are determined for each penalty according to these rules and appear in column (I) of the table.

Once the penalty increase has been rounded in accordance with the procedures set forth in the 1990 Act, as amended (*see* column (J) of the table) the rounded increase must be added to the penalty to be adjusted to determine the revised penalty amounts. *See* column (K) of the table.

Upon application of the COLA rules previously described, and as reflected in the table set forth above, the following CMPs under title I of ERISA are affected:

(1) The CMP of up to $1,000 a day set by ERISA section 502(c)(5) for the failure or refusal on the part of a person to file the information required to be filed pursuant to ERISA section 101(g) is adjusted to $1,100 a day; and

(2) The CMP of up to $100 a day but in no event in excess of $1,000 per request set by ERISA section 502(c)(6) for the failure on the part of the plan administrator to furnish the material requested by the Secretary under ERISA section 104(a)(6) is adjusted to $110 a day but in no event in excess of $1,100 per request.[3]

In view of the foregoing, the final rule contained in this document amends subpart A of part 2575 (''Adjustment of Civil Penalties under ERISA Title I'') of title 29 of the Code of Federal Regulations (CFR) by adding the two new regulations on the adjustment for inflation of the civil monetary penalties discussed above.

Notice and Public Comment

As a general matter, the Administrative Procedure Act (APA) requires rulemakings to be published in the **Federal Register** and also mandates that an opportunity for comments be provided when an agency promulgates regulations. Section 553(b)(3)(B) of the APA exempts certain rules or agency procedures from the notice and comment requirements when an agency finds for good cause that notice and public comment are impracticable, unnecessary, or contrary to the public interest. The Department finds for good cause that notice and comment on the two CMP adjustments is unnecessary pursuant to section 553(b)(3)(B) of the APA. The Department, in this final rule is merely implementing the specific statutory methodology, prescribed by

[2] The Pension and Welfare Benefits Administration has determined for purposes of title I of ERISA that the year of adjustment is the year during which the applicability date of the final rule first applies. Because the applicability date applies to violations occurring after March 24, 2003, the year of adjustment is 2003. Accordingly, the CPI for June 2002 (*i.e.*, the CPI for the year prior to the adjustment) is used for this calculation and its value is 538.9 using the 1967-year as the base year.

[3] The first adjustment under the Act, as amended, to any CMP may not exceed 10 percent of the penalty being adjusted. This is the first COLA adjustment to the section 502(c)(5) and 502(c)(6) CMPs and the adjustment to each CMP does not exceed the statutory cap. Section 502(c)(5) was added to title I of ERISA by the Health Insurance Portability and Accountability Act of 1996, and section 502(c)(6) was added to title I of ERISA by the Taxpayer Relief Act of 1997.

the 1990 Act, as amended, to determine whether the CMPs under title I of ERISA must be adjusted for inflation. The Department did not exercise discretion as to the calculation of the CMP adjustments and the final rule involves minor technical amendments to part 2575 of title 29 of the CFR for only two CMPs. Accordingly, the regulation is being published as a final rule.

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 has been determined that this action is not ''significant'' and therefore is not subject to review by OMB.

As required by the Act for each civil monetary penalty, the Department has applied the relevant COLA to the penalty amount to be adjusted, rounded the penalty increase as prescribed under the 1990 Act, and added the increase to the unadjusted penalty to determine changes, if any, in the penalty amounts. The recalculation resulted in a small penalty increase of 10 percent to the penalty amounts contained in sections 502(c)(5) and 502(c)(6) of ERISA. No other adjustments are required for civil penalties under ERISA as a result of the recalculation. The amendments implement the statutory adjustment required by the 1990 Act, as amended, and having no impact that is separate from that of the statutory provisions, are not ''significant'' under Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires each Federal agency to perform a regulatory flexibility analysis for all rules subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C 551 *et seq.*) unless the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

Because this rule is being issued as a final rule without notice and comment under the provision of section 553(b)(3)(B) of the APA, the RFA does not apply and the Department is not required to either certify that the rule will not have a significant impact on a substantial number of small entities or conduct a regulatory flexibility analysis. The Department does not anticipate that this final rule will impose a significant impact on a substantial number of small entities because it is expected to have no impact that is separate from the statutory adjustment required by the 1990 Act, as amended.

Paperwork Reduction Act

This rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a ''collection of information'' as defined in 44 U.S.C. 3502(3).

Congressional Review Act

The final rule is subject to the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Controller General for review. The final rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not impose an annual burden exceeding $100 million on the private sector.

Executive Order 13132

The Department has reviewed this regulation in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain specifically enumerated exceptions not applicable here, that the provisions of titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA.

Statutory Authority

This regulation is adopted pursuant to the authority contained in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, title III, section 31001(s), 110 Stat. 1321–373), and the authority contained in sections 502(c) and 505 of ERISA, 29 U.S.C. 1132(c) and 1135.

List of Subjects in 29 CFR Part 2575

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Penalties, Pensions, Pension and Welfare Benefits Administration.

Final Rule

In view of the foregoing, subpart A of part 2575 of chapter XXV of title 29 of the Code of Federal Regulations is amended as follows:

PART 2575—[AMENDED]

1. The authority citation for part 2575 is revised to read as follows:

Authority: Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by section 31001(s) of Pub. L. 104–134, 110 Stat. 1321–373; 29 U.S.C. 1059(b), 1132(c) and 1135; Secretary of Labor Order No. 1–87.

2. Amend part 2575 by revising § 2575.100 and adding in the appropriate place §§ 2575.502c–5 and 2575.502c–6 to read as follows:

§ 2575.100 In general.

Section 31001(s) of the Debt Collection Improvement Act of 1996 (the Act, Public Law 104–134, 110 Stat. 1321–373) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act, Public Law 101–

410, 104 Stat. 890) to require generally that the head of each Federal agency adjust the civil monetary penalties subject to its jurisdiction for inflation within 180 days after enactment of the Act and at least once every four years thereafter.

§ 2575.502c–5 Adjusted civil penalty under section 502(c)(5).

In accordance with the requirements of the 1990 Act, as amended, the maximum amount of the civil monetary penalty established by section 502(c)(5) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is hereby increased from $1,000 a day to $1,100 a day. This adjusted penalty applies only to violations occurring after March 24, 2003.

§ 2575.502c–6 Adjusted civil penalty under section 502(c)(6).

In accordance with the requirements of the 1990 Act, as amended, the maximum amount of the civil monetary penalty established by section 502(c)(6) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is hereby increased from $100 a day but in no event in excess of $1,000 per request to $110 a day but in no event in excess of $1,100 per request. This adjusted penalty applies only to violations occurring after March 24, 2003.

Signed in Washington, DC, this 15th day of January, 2003.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 03–1271 Filed 1–21–03; 8:45 am]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 18

RIN 1219–AA98 (Phase 10)

Alternate Locking Devices for Plug and Receptacle-Type Connectors on Mobile Battery-Powered Machines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: MSHA is revising and updating the existing regulation by allowing the optional use of alternative locking devices for plugs and receptacles to secure battery plugs to receptacles. The rule eliminates the need to file petitions for modification to use this alternative means of securing battery plugs to receptacles.

MSHA is using direct final rulemaking for this action because the Agency expects that there will be no significant adverse comments on the rule. Elsewhere in this issue of the **Federal Register**, MSHA is publishing a companion proposed rule under MSHA's usual procedure for notice and comment rulemaking to provide a procedural framework to finalize the rule in the event the Agency receives significant adverse comments and withdraws this direct final rule. The companion proposed rule and this direct final rule are substantively identical.

DATES: This direct final rule is effective March 10, 2003, unless we receive significant adverse comments by February 21, 2003. If we receive such comments, we will publish a timely withdrawal of this direct final rule and proceed with notice and comment rulemaking.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov,* by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm.*

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9442; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov.* You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.htm.*

SUPPLEMENTARY INFORMATION:

I. Direct Final Rules

Concurrent with this direct final rule, we also are publishing a separate, identical proposed rule in the Proposed Rule section of this **Federal Register**. This duplicate proposed rule will speed notice and comment rulemaking under § 553 of the Administrative Procedure Act should we have to withdraw this direct final rule. All interested parties should comment at this time because we will not initiate an additional comment period.

MSHA has determined that the subject of this rulemaking is suitable for a direct final rule. The Agency believes the actions taken are noncontroversial and therefore does not anticipate receiving any significant adverse comments. If MSHA does not receive significant adverse comments on or before February 21, 2003, the Agency will publish a notice in the **Federal Register** no later than March 10, 2003, confirming the effective date of the direct final rule.

For purposes of this direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, MSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice and comment process. A comment recommending an addition to the rule will not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the addition. If significant adverse comments are received, the Agency will publish a notice of significant adverse comments in the **Federal Register** withdrawing this direct final rule no later than March 10, 2003.

In the event the direct final rule is withdrawn because of significant adverse comments, the Agency can proceed with the rulemaking by addressing the comments received and publishing a final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule. The Agency will consider such comments in developing a subsequent final rule.

II. Background Information

Currently, under § 18.41 of Title 30, Code of Federal Regulations, MSHA sets forth design and construction requirements for plug and receptacle-type connectors used with permissible electric equipment approved under part 18. These technical requirements were last revised in March of 1968, which represented the latest advances in battery connector technology considered appropriate for use on mining equipment at that time.

Over the past thirty years, there have been technological improvements to the methods used for securing battery plugs

to receptacles. Since the provisions of existing section 18.41(f) do not reflect the latest state-of-the-art technology, mine operators file petitions for modification under Section 101(c) of the Mine Act to take advantage of the technological advancements. Since 1980, there have been approximately 300 petitions filed and granted under Section 101(c) requesting modification to 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 18.41(f) (Plug and receptacle-type connectors) to allow the use of alternate locking devices. The means of securing battery connectors permitted under this direct final rule allows for the use of padlocks and other equally effective mechanical devices that preclude the inadvertent separation of the battery plug from the receptacle.

In some operations, mine operators encountered difficulties with padlocks in both normal and emergency situations. The use of padlocks requires the maintenance of keys by authorized personnel. Due to the nature of mining operations, padlocks may be filled with mining debris, rendering them difficult or impossible to open with a key. Padlock keys can be misplaced, broken, or bent and may become unusable. This can go unnoticed by the operator until an emergency occurs, when the key may be unavailable or unusable. The removal of a padlock to permit the disconnection of a battery plug in an emergency situation, such as a battery fire, requires a longer period of time and greater effort than the removal of any of the other locking devices permitted in this direct final rule. However, where keys are accessible and padlocks are relatively free from accumulation of dust, padlocks have proven to be effective.

In 1987, to address the problems encountered with the use of padlocks, MSHA issued a policy allowing use of an alternative to padlocks. This policy permits the use of a device that is captive and requires a special tool to disengage and allow separation of the connector. A device is captive when a mechanical connection is made permanent by a locking device that is confined in its mounting location in a manner where, once installed, it cannot be inadvertently removed. The mechanical connection can only be made non-permanent by direct and intervening action using a special tool. A special tool is one that is not normally carried by miners and is used to ensure that constant pressure is maintained to prevent inadvertent separation of the plug from the receptacle.

Since 1980, mine operators have also been granted permission, through the petition for modification process, to use a spring-loaded locking device. MSHA determined that spring-loaded locking devices provide at least the same measure of protection as padlocks and captive locking devices. These devices maintain constant pressure on the threaded ring or equivalent mechanical fastening to prevent the plug from accidentally disengaging from the receptacle.

For both alternate locking devices, the captive locking device and the spring loaded locking device, a warning tag is also required to alert the user that the connector must not be disengaged under load. Withdrawal of a battery plug from the receptacle while the machine is energized (*i.e.,* under load) can create incendive arcing and sparking that could result in a personal injury, explosion, or fire. The requirement for the warning tag, along with part 48 new task training requirements, provide for appropriate hazard recognition when using alternative locking devices. MSHA is unaware of any adverse incidents involving alternate locking devices.

By issuing this direct final rule, MSHA is responding to the requirements of the Regulatory Flexibility Act and Executive Order 12866 that agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses while maintaining needed protections for workers. This rule maintains the protection afforded by the existing standard.

III. Discussion of Alternative Locking Devices on Mobile Battery-Powered Machines

A. Paragraph 18.41

Section 18.41 addresses connectors used on battery and non battery-powered machines. Section 18.41(f) specifies requirements for plug and receptacle-type connectors used on mobile battery-powered machines employed in underground gassy mines. This direct final rule modifies paragraph (f) of 30 CFR 18.41 by adding two new provisions allowing the use of devices that provide at least the same measure of protection as that afforded by the existing standards. The Agency recognizes that battery-powered machine designs differ from conventional machine designs employing trailing cables. The energy to battery-powered equipment is carried on-board the machine with rechargeable battery assemblies, rather than being transmitted via a trailing cable from a section power center. Because of the inherent design limitations of battery-powered machines, there is no practical way to automatically remove all electrical power from battery-powered machines. Machines powered by trailing cables have circuit-interrupting devices that can be used to de-energize them, whereas most battery-powered machines rely on a plug and receptacle for de-energization. The proper procedure for removing power from a battery-powered machine is to first open the main machine disconnect device and then to disengage the plug from the receptacle. This effectively isolates the battery power from the machine.

B. Subparagraph 18.41(f)(1)

Subparagraph 30 CFR 18.41(f)(1) retains the existing provision that a plug padlocked to the receptacle will be acceptable in lieu of an interlock provided the plug is held in place by a threaded ring or equivalent mechanical fastening in addition to the padlock. This paragraph also retains the provision that a connector within a padlocked enclosure will be acceptable.

A padlock used on a battery plug and receptacle-type connector serves a dual purpose. It secures the threaded ring or equivalent mechanical fastening in place. A padlock is also used as a means to prevent the removal of the plug from the receptacle by unauthorized personnel. In this respect, only those persons having keys are considered authorized to remove the plug from the receptacle.

C. Subparagraph 18.41(f)(2)

Subparagraph 30 CFR 18.41(f)(2) is a new provision which provides for an alternate method for securing the battery plug to the receptacle. The rule provides that a plug which is held in place by a threaded ring or equivalent mechanical fastening will be acceptable provided that the threaded ring is secured in place with a device that is captive. It also requires a special tool to disengage the device and allow for the separation of the connector. It further requires a warning tag that states: ''DO NOT DISENGAGE UNDER LOAD.''

D. Subparagraph 18.41(f)(3)

Subparagraph 30 CFR 18.41(f)(3) is a new provision which provides for another alternate method for securing the battery plug to the receptacle. The rule states that a plug held in place by a spring-loaded or other locking device that maintains constant pressure against a threaded ring or equivalent mechanical fastening will be acceptable provided that it secures the plug from accidental separation. It further requires

a warning tag that states: ''DO NOT DISENGAGE UNDER LOAD.''

This subparagraph allows for the use of other locking devices that may become available in the future. The Agency has included this language to allow for acceptance of equally effective devices. Devices not explicitly defined in this rulemaking must be equally effective and provide at least the same measure of protection as those incorporated under this section.

Neither of the alternatives in subparagraphs 18.41(f)(2) or (f)(3) imposes additional requirements to the 1987 MSHA policy or the granted petitions for modification.

IV. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

Introduction

MSHA is issuing a direct final rule amending 30 CFR 18.41(f), concerning plug and receptacle-type connectors for mobile battery-powered equipment. This direct final rule revises and updates the existing regulation by allowing the use of alternate locking devices to secure battery plugs to receptacles. Two alternate locking devices are addressed in this direct final rule.

(1) Captive locking devices requiring use of a special tool. These devices have been accepted since 1987 under an MSHA policy allowing their usage.

(2) Spring loaded or other locking devices. Spring-loaded locking devices have been accepted by MSHA under the 101(c) Petition for Modification process.

The direct final rule eliminates the need to file petitions for modification (PFM) to use spring-loaded locking devices to secure battery plugs to receptacles. It also codifies the 1987 MSHA policy of allowing acceptance of captive locking devices.

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has fulfilled this requirement for the direct final rule, and based upon its economic analysis, has determined that the direct final rule will not have an annual effect of $100 million or more on the economy. Therefore, it is not an economically significant regulatory action pursuant to § 3(f)(1) of E.O. 12866.

The direct final rule will eliminate the need for mine operators of underground gassy mines, who choose to use plug and receptacle-type connectors for mobile battery-powered equipment, to file PFMs, and thereby generate cost savings.

From 1999 to 2001, 66 petitions were filed and granted to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors). Through November 20, 2002, 23 petitions have been filed, for a total of 89 petitions filed from 1999 to 2002. On average, 22 petitions were filed during each of the past 4 years.

Mining Sectors Affected

This direct final rule applies to all underground gassy mines. All underground coal mines are considered gassy mines and are affected by this rule. Gassy metal and nonmetal (M/NM) mines can also be affected by this direct final rule. Currently there are no battery-powered machines of the type covered by this rule in any of the gassy M/NM mines. Since these devices have not been used in M/NM mines, for purposes of this economic analysis, MSHA assumes that M/NM mines will not be affected by this rule. MSHA estimates that, on average, 22 underground coal mines per year will be affected by this rule.

Benefits

MSHA has qualitatively determined that the direct final rule, which permits use of alternate locking devices on mobile battery-powered equipment instead of using padlocks, will yield safety benefits relative to the existing rule, which does not permit use of alternate locking devices on mobile battery-powered equipment. The use of alternate locking devices in lieu of padlocks on mobile battery-powered equipment eliminates the problems associated with difficult removal of padlocks.

Compliance Costs

Cost savings from the direct final rule will accrue to underground coal mines that choose to use spring-loaded locking devices on mobile battery-powered equipment since they will no longer have to file a PFM. Cost savings from this rule are estimated at $9,747 per year. The cost savings are based upon the elimination of the filing of an average of 22 petitions per year. It is projected that of the 22 mines, 19 would employ 20 to 500 workers, and 3 would employ fewer than 20 workers. For 3 mines that employ fewer than 20 workers these cost savings will be $1,329. For the remaining 19 mines that employ 20 to 500 workers the cost savings will be $8,418.

Mines Employing Fewer Than 20 Workers

The cost savings of $1,329 for mines employing fewer than 20 workers are derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare a petition (3 petitions × 8 hours × $54.92 per hour = $1,318). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hours to copy and mail a petition (3 petitions × 0.1 hours x $19.58 per hour = $6). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are $0.15 per page, and postage is $1 [3 petitions × ((5 pages × $0.15 per page) + $1) = $5].

Mines Employing 20 to 500 Workers

The cost savings of $8,418 for mines that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare a petition (19 petitions × 8 hours × $54.92 per hour = $8,348). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hours to copy and mail a petition (19 petitions × 0.1 hours × $19.58 per hour = $37). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are $0.15 per page, and postage is $1 [19 petitions × ((5 pages × $0.15 per page) + $1) = $33].

There are no substantive changes in the direct final rule that apply to any mine that chooses not to use alternate locking devices on mobile battery-powered equipment. Thus, these mines would not incur costs nor generate cost savings as a result of the direct final rule. Accordingly, we are publishing the factual basis for our regulatory flexibility certification statement in the **Federal Register**, as a part of this preamble, and are providing a copy to the Small Business Administration, Office of Advocacy. We also will mail a copy of the direct final rule, including the preamble and certification statement, to mine operators and miners' representatives and post it on our Internet Home page at *http://www.msha.gov*.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the direct final rule on small businesses. Further, MSHA has made a determination with respect to whether or not the Agency can certify that the direct final rule will not have a significant economic impact on a substantial number of small entities that are covered by these rulemakings. Under the SBREFA amendments to the RFA, MSHA must include in the rule a

factual basis for this certification. If the direct final rule has a significant economic impact on a substantial number of small entities, then the Agency must develop a regulatory flexibility analysis.

Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action, and hence is required to use the SBA definition.

The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees (13 CFR 121.201). All of the mines affected by this rulemaking fall into this category and hence can be viewed as sharing the special regulatory concerns which the RFA was designed to address.

Traditionally, the Agency has also looked at the impacts of its rules on a subset of mines with 500 or fewer employees—those with fewer than 20 employees, which the mining community refers to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also, among other things, in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA rules and the impact of MSHA rules on them would also tend to be different. It is for this reason that ''small mines,'' as traditionally defined by the mining community, are of special concern to MSHA.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on ''small entities'' while continuing MSHA's traditional look at ''small mines.'' MSHA concludes that it can certify that the direct final rule will not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. The Agency has determined that this is the case both for mines affected by this rulemaking with fewer than 20 employees and for mines affected by this rulemaking with 500 or fewer employees.

Factual Basis for Certification

The Agency's analysis of impacts on ''small entities'' begins with a ''screening'' analysis. The screening compares the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for those small entities. When estimated compliance costs are less than one percent of the estimated revenues, or they are negative (that is, they provide a cost savings), the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, it tends to indicate that further analysis may be warranted. Using either MSHA's or SBA's definition of a small mine, the direct final rule results only in cost savings to affected mines. Therefore, this direct final rule does not have a significant economic impact on a substantial number of small entities using either MSHA's or SBA's definition of a small mine.

V. Paperwork Reduction Act of 1995

The amendments to 30 CFR 18.41(f) do not introduce any new paperwork requirements that are subject to OMB approval under the Paperwork Reduction Act. In addition, the third-party disclosure requirements proposed for 30 CFR 18.41(f)(2) and (3) are not considered a ''collection of information'' because the standard provides the exact language for warning tags [*see* 5 CFR 1320.3(c)(2)].

As a result of this direct final rule, the number of petitions for modification filed annually related to battery plugs will be reduced. Therefore, this will result in reducing burden hours and costs in the ICR 1219–0065 paperwork package, which concerns the filing of petitions for modification.

This direct final rule will result in 178.2 burden hour savings annually and associated annual burden cost savings of $9,709 related to the elimination of 22 petitions annually for alternate locking devices to secure battery plugs to receptacles. Of this total, for the 3 mines that employ fewer than 20 workers, there will be 24.3 burden hours savings annually and associated annual burden cost savings of $1,324. For the 19 mines that employ 20 to 500 workers, there will be 153.9 burden hours savings annually and associated annual burden cost savings of $8,385.

Mines Employing Fewer Than 20 Workers

The annual reduction of 24.3 burden hours and the $1,324 cost savings for the 3 mines that employ fewer than 20 workers are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare a petition (3 petitions × 8 hours = 24 hours). In addition, on average, a clerical worker takes 0.1 hours, 6 minutes, to copy and mail a petition (3 petitions × 0.1 hours = 0.3 hours). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 24 burden hours = $1,318.10). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 0.3 burden hours = $5.90).

Mines Employing 20 to 500 Workers

The annual reduction of 153.9 burden hours and the $8,385 cost savings for the 19 mines that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare a petition (19 petitions × 8 hours = 152 hours). In addition, on average, a clerical worker takes 0.1 hours, 6 minutes, to copy and mail a petition (19 petitions × 0.1 hours = 1.9 hours). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 152 burden hours = $8,347.84). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 1.9 burden hours = $37.20).

The amendment to 30 CFR 18.41(f) eliminates a need for mine operators to file petitions for modification. Resulting from the decreased number of petitions, MSHA will not conduct investigations related to the determination the merits of the petition. The paperwork containing the information necessary to permit investigation of the petition for modification will not be needed. The petition for modification paperwork requirements are contained in 30 CFR 44.9, 44.10 and 44.11. They are approved under OMB control number 1219–0065. We are not amending §§ 44.9, 44.10, or 44.11. We are only amending a regulation that is frequently petitioned. Consequently, MSHA will not submit a paperwork package with this direct final rule. Although it is not necessary to update the Information Collection Requirement document at this time, we will submit the necessary paperwork to record the decrease in burden when appropriate. Our estimate of the number of petitions submitted each year will be reduced by the average number of petitions for modification currently submitted to modify the current regulation.

VI. Other Regulatory Considerations

A. Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this direct final rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private

sector of more than $100 million. MSHA is not aware of any State, local, or tribal government that either owns or operates underground coal mines.

B. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This direct final rule is not subject to Executive Order 12630 because it does not involve implementation of a policy with takings implications.

C. Executive Order 12988 (Civil Justice Reform)

MSHA has reviewed Executive Order 12988 and determined that this direct final rule will not unduly burden the Federal court system. The Agency wrote the direct final rule to provide a clear legal standard for affected conduct and has reviewed it carefully to eliminate drafting errors and ambiguities.

D. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effects of this direct final rule on children and has determined that it will have no adverse effects on children.

E. Executive Order 13132 (Federalism)

MSHA has reviewed this direct final rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have federalism implications.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

MSHA certifies that the direct final rule does not impose substantial direct compliance costs on Indian tribal governments.

G. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, MSHA has reviewed this direct final rule and has determined that it has no adverse effect on the production or price of coal. Consequently, it has no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

H. Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the direct final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in section V in this preamble, MSHA has determined that this direct final rule will not have a significant economic impact on a substantial number of small entities.

VII. Petitions for Modification

On the effective date of this direct final rule, all existing petitions for modification for alternate locking devices for plug and receptacle-type connectors on mobile battery-powered machines will be superseded. Mine operators who have a previously granted petition modifying 30 CFR 75.503 and 18.41(f) will thereafter be considered in compliance with this rule, as long as the equipment is maintained in compliance with the specifications stated in the original petition for modification. All battery-powered equipment approved with locking devices prior to the effective date of this rule will be considered compliant, as long as the equipment is maintained in accordance with the originally approved specifications.

List of Subjects in 30 CFR Part 18

Mine safety and health, Reporting and recordkeeping requirements, Underground mining.

Dated: January 13, 2003.

Dave D. Lauriski,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are amending chapter I, subpart B, part 18 of title 30 of the Code of Federal Regulations as follows:

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

Subpart B—[Amended]

2. Paragraph (f) of § 18.41 is revised to read as follows:

§ 18.41 Plug and receptacle-type connectors.

* * * * *

(f) For a mobile battery-powered machine, a plug and receptacle-type connector will be acceptable in lieu of an interlock provided:

(1) The plug is padlocked to the receptacle and is held in place by a threaded ring or equivalent mechanical fastening in addition to a padlock. A connector within a padlocked enclosure will be acceptable; or,

(2) The plug is held in place by a threaded ring or equivalent mechanical fastening, in addition to the use of a device that is captive and requires a special tool to disengage and allow for the separation of the connector. All connectors using this means of compliance shall have a clearly visible warning tag that states: ''DO NOT DISENGAGE UNDER LOAD''; or,

(3) The plug is held in place by a spring-loaded or other locking device, that maintains constant pressure against a threaded ring or equivalent mechanical fastening, to secure the plug from accidental separation. All connectors using this means of compliance shall have a clearly visible warning tag that states: ''DO NOT DISENGAGE UNDER LOAD.''

[FR Doc. 03–1305 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–03–001]

RIN 2115–AE47

Drawbridge Operating Regulations; Bayou Lafourche, Cutoff, 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 1 (Galliano Lift) bridge across Bayou Lafourche, mile 30.6, near Cutoff, Lafourche Parish, Louisiana. This deviation allows the bridge to remain closed to navigation for two four-hour periods daily from February 3, through February 12, 2003. The deviation is necessary to allow for the replacement of the grid decking on the bridge.

DATES: This deviation is effective from 7 a.m. on Monday, February 3, 2003 until 4 p.m. on Wednesday, February 12, 2003.

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 telephone number is 504–589–2965. The Bridge Administration Branch, Eighth 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 Louisiana Department of Transportation and Development has requested a temporary deviation in order to replace the grid decking of the bridge. These repairs are necessary for the continued operation of the bridge. This deviation allows the draw of the SR 1 bridge to remain closed to navigation from 7 a.m. until 11 a.m. and from noon until 4 p.m. daily from Monday, February 3, 2003 through Wednesday, February 12, 2003.

The vertical lift bridge has a vertical clearance of 3 feet above high water in the closed-to-navigation position. The bridge normally opens to pass navigation an average of 472 times a month. In accordance with 33 CFR 117.465(a), the draw of the bridge opens on signal; except that, from 2:30 p.m. to 3:30 p.m. and from 4:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels. The bridge will not be able to open for emergencies during the closure period as the weight disparity during the repairs will not allow for the safe operation of the bridge. Navigation on the waterway consists mainly of fishing vessels and some tugs with tows. An alternate route is available to these vessels by entering Bayou Lafourche from the Gulf Intracoastal Waterway.

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: January 9, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–1287 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–02–043]

RIN 2115–AE47

Drawbridge Operation Regulation; Mississippi River, Burlington, IA

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard published a final rule on December 27, 2002, temporarily changing the regulation governing the Burlington Railroad Drawbridge, Mile 403.1, Upper Mississippi River. The section number for the temporary change was incorrect. This document corrects the section number for the temporary change.

DATES: This correction is effective January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Eighth Coast Guard District Bridge Branch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard published a temporary rule in the **Federal Register** on December 27, (67 FR 78977), adding section 117.T408.

Need for Correction

As published, the section number used in the regulatory text was incorrect.

Correction of Publication

In rule FR Doc. 02–32723 published on December 27, 2002 (67 FR 78977) make the following correction. On page 78978, in the third column, in amendatory instruction 2 and the subsequent section heading, change ''117.T408'' to read ''117.T409''

Dated: January 13, 2003.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–1351 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–02–102]

RIN 2115–AE84

Regulated Navigation Area; Chesapeake Bay Entrance and Hampton Roads, VA and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Commander, Fifth Coast Guard District is temporarily expanding the geographic definition of the Hampton Roads Regulated Navigation Area to include the waters of the 12 nautical mile territorial sea off the Coast of Virginia and by adding new port security measures, in order to improve the safety and security of vessel traffic at the entrance to Chesapeake Bay and Hampton Roads, Virginia. The effect of this temporary rule will be to ensure the safety and security of the boating public, local military commands, and commercial shipping interests in the area.

DATES: This temporary final rule is effective from December 20, 2002 to June 15, 2003.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia 23510 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Monica Acosta, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3453.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation and the rule takes effect immediately. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Immediate action is necessary to ensure the safety and security of the public, naval vessels moored at Naval Station Norfolk, and the commercial shipping industry in Hampton Roads, VA. There have been recent reports, all a matter of public record, that indicate a continuing high risk of terrorist activity in the United States. Based on these reports, the Fifth Coast Guard District Commander has determined a heightened security condition in the Port of Hampton Roads is required. Delay in implementing these changes, therefore, would be contrary to the public interest.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

This temporary rule is necessary for the District Commander to reduce the potential threat to the Port of Hampton Roads, VA and surrounding waterways. The Coast Guard, as lead federal agency for maritime homeland security, must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression,

and attacks by terrorists on the American homeland while at the same time maintaining our freedoms and sustaining the flow of commerce. The Coast Guard implements Limited Access Areas, listed in 33 CFR part 165, in order to control vessel movements within Captain of the Port Zones. A Regulated Navigation Area is a type of Limited Access Area that may be used to control vessel traffic by specifying times of vessel entry, movement, or departure to, from, within, or through ports, harbors or other waters. The temporary rule the District Commander has established by this rulemaking allows for differentiation between lawful and unlawful maritime activities without unreasonably disrupting the free flow of commerce.

The District Commander has created a series of validation procedures to identify legitimate users of the Port of Hampton Roads. Validation procedures for vessels in excess of 300 GT, including tug and barge combinations in excess of 300 gross tons combined, include the following:

1. Vessels must check in with the Captain of the Port or his representative at least thirty minutes prior to entry to obtain permission to transit the Regulated Navigation Area.
2. Upon authorization and approval by the Captain of the Port or his representative, the vessel may enter the Regulated Navigation Area.
3. All vessels that receive permission to enter the Regulated Navigation Area remain subject to a Coast Guard port security boarding.
4. Thirty minutes prior to getting underway, vessels departing or moving within the Regulated Navigation Area must contact the Captain of the Port or his representative via VHF–FM channel 13 or 16, call (757) 444–5209/5210, or call (757) 441–3298 for the Captain of the Port Command Duty Officer.

The Captain of the Port will notify the public of changes in the status of the port security requirements by marine information broadcast on VHF–FM marine band radio, channel 22A (157.1 MHz)

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This temporary final rule will affect only those vessels in excess of 300 GT that enter and depart the Port of Hampton Roads and it is implemented for a limited duration. Therefore, we expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include 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. section 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities. This temporary rule will affect only the following entities, some of which may be small entities: owners and operators of commercial vessels larger than 300 gross tons intending to transit or anchor in the Regulated Navigation Area. Because the number of small entities owning/operating commercial vessels of this size is not substantial, the rule is for a limited duration, and there is little anticipation of delay when requesting entry into the Area, the economic impact of this temporary rule should be minimal.

If, however, you believe that your business or organization qualifies as a small entity and that this temporary rule will have a significant economic impact on your business or organization, please submit a comment (*see* **ADDRESSES**) explaining why you believe it qualifies and in what way and to what degree this temporary rule will economically affect it.

Assistance for Small Entities

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

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

Collection of Information

This temporary rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Unfunded Mandates

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

Taking of Private Property

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

Civil Justice Reform

This temporary 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 temporary rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary 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 temporary rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lC, this temporary final rule is categorically excluded from further environmental documentation. This temporary rule seeks to modify a well-established Regulated Navigation Area, and will be in effect for 6 months. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

Part 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. From December 20, 2002, until June 15, 2003, in § 165.501, temporarily suspend paragraph (a)(1) and add new paragraphs (a)(13), (d)(15) and (d)(16) to read as follows:

165.501 Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters-regulated navigation area.

(a) * * *

(1) A line drawn due east from the mean low water mark at the North Carolina/Virginia border at latitiude 36°33′03″ N, longitude 75°52′00″ W, to the Territorial Seas boundary line at latitiude 36°33′05″ N, longitude 75°36′51″ W, thence generally northeastward along the Territorial Seas boundary line to latitiude 38°01′39″ N, longitude 74°57′18″ W, thence due west to the mean low water mark at the Maryland/Virginia border at latitiude 38°01′39″ N, longitude 75°14′30″ W.

* * * * *

(d) * * *

(15) *Port Security Requirements.* No vessel in excess of 300 gross tons, including tug and barge combinations in excess of 300 gross tons (combined), shall enter the Regulated Navigation Area, move within the Area, or be present within the Area unless it complies with the following requirements.

(i) Obtain authorization to enter the Regulated Navigation Area from the Captain of the Port or his representative at least thirty minutes prior to entering the Regulated Navigation Area. All vessels entering or remaining in the Area may be subject to a Coast Guard boarding.

(ii) Follow all instructions issued by the Captain of the Port or his representative.

(iii) Ensure that no person who is not a permanent member of the vessel's crew, or a member of a Coast Guard boarding team, boards the vessel without presenting valid photo identification.

(iv) Report any departure from or movement within the Regulated Navigation Area to the Captain of the Port or his representative at least 30 minutes prior to getting underway.

(v) Contact the Captain of the Port or his representative on VHF–FM channel 13 or 16, or by calling (757) 444–5209, (757) 444–5210, or (757) 441–3298

(vi) In addition to the authorities listed in this part, this paragraph is promulgated under the authority under 33 U.S.C. 1226.

(16) For purposes of the port security requirements in paragraph (d)(15) of this section, the *Captain of the Port or his representative* means any official designated by the Captain of the Port including, but not limited to, any Coast Guard patrol vessel. All patrol vessels shall display the Coast Guard Ensign at all times when underway.

* * * * *

Dated: December 20, 2002.

J. D. Hull,

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

[FR Doc. 03–1008 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–132]

RIN 2115–AA97

Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent safety and security zones around the Indian Point Nuclear Power Station (IPNPS), all commercial waterfront facilities, Liquefied Hazardous Gas (LHG) Facilities on the Arthur Kill; moored or anchored U.S. Coast Guard vessels; Coast Guard Stations New York, Sandy Hook, and Kings Point and Aids to Navigation Team New York; Ellis and Liberty Islands; all bridge piers and abutments, and overhead power cable towers, piers and abutments; tunnel ventilators; the New York City Passenger Ship Terminal; a moving safety and security zone around ''Designated Vessels'' (DVs) deemed by the Captain of the Port to require special protection on account of their hazardous cargo or passenger carrying capacity; and revising the current regulations that establish moving safety zones around Liquefied Petroleum Gas vessels. This action is necessary to safeguard facilities, vessels, public, and the surrounding areas from sabotage, subversive acts, or other threats. The zones will prohibit entry into or movement within these areas without authorization from the Captain of the Port New York.

DATES: This rule is effective January 1, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–132) and are available for inspection or copying at room 204, Coast Guard Activities New

York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 27, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone'' in the **Federal Register** (67 FR 70892). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard promulgated a temporary final rule (66 FR 51558) establishing safety and security zones in the New York Marine Inspection and Captain of the Port Zones New York immediately following the terrorist attacks of September 11, 2001. The measure was taken to safeguard human life, vessels and waterfront facilities from terrorist attack or sabotage. That temporary final rule was subsequently revised (67 FR 16016; 67 FR 53310) to extend its effective period through December 31, 2002. The temporary final rule has not been burdensome on the maritime public as evidenced by the absence of any response to previous invitations of comments regarding the temporary rule's terms or establishment. This final rule is essentially equivalent to the temporary rule in scope and effect and is necessary for the continued safety and security of the port. Our notice of proposed rulemaking for this final rule notified the public that we anticipated a January 1, 2003 effective date. No public comments or objections to the anticipated effective date were received. Any delay in the effective date of this regulation is unnecessary and contrary to the public interest.

Background and Purpose

On September 11, 2001 three commercial aircraft were hijacked and flown into the World Trade Center in New York City, and the Pentagon, inflicting catastrophic human casualties and property damage. National security and intelligence officials warn that future terrorist attacks are likely. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. *See, Continuation of the National Emergency with Respect to Certain Terrorist Attacks,* 67 FR 58317 (September 13, 2002); *Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism,* 67 FR 59447 (September 20, 2002). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is endangered by disturbances in international relations of United States that have existed since the terrorist attacks on the United States and such disturbances continue to endanger such relations. *Executive Order 13273 of August 21, 2002, Further Amending Executive Order 10173, as Amended, Prescribing Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States,* 67 FR 56215 (September 3, 2002).

Immediately following the September 11th attacks, we published a temporary final rule (66 FR 51558) that established a temporary regulated navigation area, and safety and security zones in the New York Marine Inspection and Captain of the Port New York Zones. These measures were taken to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. That temporary final rule was subsequently revised (67 FR 16016; 67 FR 53310) to extend its effective period through December 31, 2002.

The Coast Guard is establishing permanent safety and security zones throughout the New York Marine Inspection and Captain of the Port Zones as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. Due to continued heightened security concerns, the permanent safety and security zones are necessary to provide for the safety of the port and ensure that vessels, facilities, bridges, overhead power cables, or tunnel ventilators, are not used as targets of, or platforms for terrorist attacks. These zones would restrict entry into or movement within portions of the New York Marine Inspection and Captain of the Port Zones.

Discussion of Proposed Rule

This rule establishes the following safety and security zones:

Indian Point Nuclear Power Station (IPNPS)

The Coast Guard is establishing a permanent safety and security zone in all waters of the Hudson River within a 300-yard radius of the IPNPS pier in approximate position 41°16′12.4″ N, 073°57′16.2″ W. The zone is necessary to protect the IPNPS, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the facility that could potentially cause serious negative impact to vessels, the port, or the environment. Commercial vessels will still be able to transit through the 540 yards between the western boundary of the safety and security zone and Hudson River Lighted Buoy 27 (LLNR 37930), and recreational vessels will still be able to transit through the western 1,115 yards of the 1,415-yard wide Hudson River. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Liquefied Hazardous Gas Vessels (LHG), LHG Facilities, and Designated Vessel (DV) Transits

The Coast Guard is revising the Liquid Petroleum Gas (LPG) vessel safety zone at 33 CFR 165.160. That regulation establishes a 100-yard moving safety zone around any LPG vessel while it transits between Scotland Lighted Horn Buoy S (LLNR 35085) and the Arthur Kill. This revision will establish a safety and security zone to include all waters within the New York Marine Inspection and Captain of the Port Zones within a 200-yard radius of any Liquefied Hazardous Gas (LHG) vessel or LHG facility. We will also establish a moving safety and security zone to include all waters within a 100-yard radius of any ''Designated Vessel'' (DVs) transiting the New York Marine Inspection and Captain of the Port Zones. DVs include: Vessels certificated to carry 500 or more passengers; vessels carrying government officials or dignitaries requiring protection by the U.S. Secret Service, or other Federal, State, or local law enforcement agency; and barges or ships carrying petroleum products, chemicals, or other hazardous cargo.

These safety and security zones are necessary to protect the LHG vessels, LHG facilities, DVs, their crews and/or passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack against a vessel or a facility that could potentially cause serious negative impact to human life, the vessels, facilities, the port, or the environment. Safety and security zones are necessary to protect passenger vessels due to their potential as a target of subversive or terrorist attack, which could result in significant casualties.

Vessels may transit through any portion of the LHG facility safety and security zones that extend into the navigable channel for the sole purpose of transiting through the safety and security zones so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the safety and security zones.

The Captain of the Port will notify the maritime community of the periods during which the safety and security zones will be enforced by the methods identified in 33 CFR 165.7 including electronic mail broadcasts identifying ''Designated Vessel'' transit.

U.S. Coast Guard Cutters and Shore Facilities

The Coast Guard is establishing permanent safety and security zones within 100 yards of each moored, or anchored, Coast Guard Cutter operating within the New York Marine Inspection and Captain of the Port Zones. We also propose to establish a safety and security zone within 100 yards of Coast Guard Station New York, Staten Island, NY, Coast Guard Station Sandy Hook, NJ, Coast Guard Station Kings Point, NY, and Coast Guard Aids to Navigation Team New York, Bayonne, NJ.

The safety and security zones will protect Coast Guard assets, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the Coast Guard that could cause serious damage to vessels, the port or the environment or adversely impact the Coast Guard's ability to conduct its assigned missions. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to any cutter or shoreside facility. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Commercial Waterfront Facilities

The Coast Guard is establishing a permanent safety and security zone within 25 yards of each commercial waterfront facility located within the New York Marine Inspection and Captain of the Port Zones that is capable of accepting barge, ship, or ferry vessels. A ''commercial waterfront facility'' means all piers, wharves, docks and similar structures to which commercial vessels may be secured; areas of land or water under and in immediate proximity to them; buildings on such structures or contiguous to them; and equipment and materials on such structures and in such buildings. During transfer operations at a commercial waterfront facility, the 25-yard zone would be measured from the outboard side of the commercial vessel instead of the pierhead. These zones prohibit the entry of vessels that are not actively engaged in legitimate, scheduled transfer operations at the individual facilities. Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the zone.

The safety and security zones are necessary to protect each facility, commercial vessels moored at the facility, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the facility that could potentially cause serious negative impact to commercial vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each facility. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone.

Liberty and Ellis Islands

The Coast Guard is establishing a permanent safety and security zone encompassing all waters within 150 yards of Liberty Island, Ellis Island, and the bridge between Liberty State Park and Ellis Island.

The safety and security zones are necessary to protect each Island, the bridge between Liberty State Park and Ellis Island, authorized sight-seeing vessels operating at each island, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the islands that could potentially cause serious negative impact to vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each Island. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

Bridge Piers and Abutments, Overhead Power Cable Towers, Piers, and Tunnel Ventilators

The Coast Guard is establishing a permanent safety and security zone within 25 yards of each bridge pier and abutment, overhead power cable tower, pier, and tunnel ventilator, located within the waters of the New York Marine Inspection and Captain of the Port New York Zones, south of the Troy, NY Locks.

The safety and security zones are necessary to protect each bridge, overhead power cable, pier, abutment, tunnel ventilator, others in the maritime community, and the surrounding communities from subversive or terrorist attack against the protected structures that could potentially cause serious negative impact to commercial ground shipments by vehicle or railroad, private vehicle traffic, vessels, the port, or the environment. The Captain of the Port does not expect this rule to interfere with the transit of any vessels through the waterways adjacent to each bridge, overhead power cable, and tunnel ventilator. Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the protected structure and do not stop or loiter within the zone. Additionally, vessels will not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zones.

New York City Passenger Ship Terminal, Hudson River, NY

The Coast Guard is establishing a permanent safety and security zone that will be enforced whenever passenger vessels are pierside at Pier 88, 90, or 92, or whenever the passenger ship terminal or the adjacent Intrepid Sea, Air and Space Museum, Manhattan is being used as an Emergency Operations Center. The Coast Guard will provide notification and termination of enforcement of a particular safety or security zone by way of methods identified in 33 CFR 165.7.

This safety and security zone includes all waters of the Hudson River bound by the following points: From the northeast corner of Pier 96 where it intersects the seawall, thence west to approximate position 40°46′23.1″ N, 073°59′59.0″ W, thence south to approximate position 40°45′55.3″ N, 074°00′20.2″ W (NAD 1983), thence east to the southeast corner of Pier 84 where it intersects the

seawall, thence north along the shoreline to the point of origin. Marine traffic will still be able to transit through the western 660 yards of the 900-yard wide Hudson River during the activation of the zone. Vessels moored at piers within the safety and security zone, however, will not be allowed to transit from their moorings without permission from the Captain of the Port, New York, during the effective periods of the safety and security zone. The only vessels that will be affected by the safety or security zones will be other passenger vessels at the Passenger Terminal or visiting vessels at the Intrepid Sea, Air and Space Museum. The Captain of the Port may authorize these vessels to transit through these zones. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety and security zone.

The safety and security zones are necessary to protect the passenger vessels, their crews and passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack that could cause serious negative impact to vessels, the port, or the environment, and result in numerous casualties.

The Captain of the Port will notify the maritime community of periods during which this safety and security zone will be enforced in accordance with methods identified in 33 CFR 165.7.

Any violation of any safety or security zone herein, is punishable by, among others, civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), *in rem* liability against the offending vessel, and license sanctions. This regulation is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port, New York. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the fact that vessels will be able to transit around the safety and security zones at the Indian Point Nuclear Power Station, the Coast Guard Stations and Cutters, Commercial Waterfront Facilities, Liberty Island, Ellis Island, Bridge Piers and Abutments, Overhead Power Cable Towers and Abutments, Tunnel Ventilators, the New York City Passenger Ship Terminal, and the DVs, vessels can still transit through the harbor before, during, or after these vessels' transits, the expected short duration of these zones' activation, the expected infrequency of the activation of the safety and security zones around LHG vessels and LHG facilities, and advance notifications will be made by methods in accordance with 33 CFR 165.7.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the New York Marine Inspection and Captain of the Port Zones in which entry will be prohibited by safety or security zones.

These safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels will be able to transit around the safety and security zones at the Indian Point Nuclear Power Station, the Coast Guard Stations and Cutters, Commercial Waterfront Facilities, Liberty Island, Ellis Island, Bridge Piers and Abutments, Overhead Power Cable Towers and Abutments, Tunnel Ventilators, the New York City Passenger Ship Terminal, and the DVs, vessels can still transit through the harbor before, during, or after these vessels' transits, the expected short duration of these zones' activation, the expected infrequency of the activation of the safety and security zones around LHG vessels and LHG facilities, and the advance notifications that will be provided by the methods described above.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from any small entities.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes safety and security zones. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.160 to read as follows:

§ 165.160 Safety and Security Zones: Liquefied Hazardous Gas Vessel, Liquefied Hazardous Gas Facility and Designated Vessel Transits, New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Location*. The following areas are safety and security zones:

(1) All waters of the New York Marine Inspection Zone and Captain of the Port Zone within a 200-yard radius of any Liquefied Hazardous Gas (LHG) vessel or LHG facility.

(2) All waters of the New York Marine Inspection Zone and Captain of the Port Zone within a 100-yard radius of any Designated Vessels.

(b) *Designated Vessels (DVs)*. For the purposes of this section, DVs are: Vessels certificated to carry 500 or more passengers; vessels carrying government officials or dignitaries requiring protection by the U.S. Secret Service, or other Federal, State or local law enforcement agency; and barges or ships carrying petroleum products, chemicals, or other hazardous cargo.

(c) *Regulations*. (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) The Captain of the Port will notify the maritime community of periods during which these zones will be enforced by methods in accordance with 33 CFR 165.7 and will identify DV vessel transits by way of electronic mail broadcast.

3. Add § 165.169 to read as follows:

§ 165.169 Safety and Security Zones: New York Marine Inspection Zone and Captain of the Port Zone.

(a) *Safety and security zones*. The following waters within the New York Marine Inspection Zone and Captain of the Port Zone are safety and security zones:

(1) *Indian Point Nuclear Power Station (IPNPS)*. All waters of the Hudson River within a 300-yard radius of the IPNPS pier in approximate position 41°16′12.4″ N, 073°57′16.2″ W (NAD 83).

(2) *U.S. Coast Guard Cutters and Shore Facilities*. All waters within 100 yards of: Each moored, or anchored, Coast Guard Cutter; Coast Guard Station New York, Staten Island, NY; Coast Guard Station Sandy Hook, NJ; Coast Guard Station Kings Point, NY; and Coast Guard Aids to Navigation Team New York, Bayonne, NJ.

(3) *Commercial Waterfront Facilities*. All waters within 25 yards of each commercial waterfront facility that is capable of accepting barge, ferry or other commercial vessels. For purposes of this section, ''commercial waterfront facility'' means all piers, wharves, docks and similar structures to which barge, ferry or other commercial vessels may be secured; areas of land or water under and in immediate proximity to them; buildings on such structures or contiguous to them; and equipment and materials on such structures and in such buildings.

(i) When a barge, ferry or other commercial vessel is conducting transfer operations at a commercial waterfront facility, the 25-yard zone is measured from the outboard side of the commercial vessel.

(ii) Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the commercial waterfront facility and do not stop or loiter within the zone.

(4) *Liberty and Ellis Islands*. All waters within 150 yards of Liberty Island, Ellis Island, and the bridge between Liberty State Park and Ellis Island.

(5) *Bridge Piers and Abutments, Overhead Power Cable Towers, Piers and Tunnel Ventilators*. All waters within 25 yards of any bridge pier or

abutment, overhead power cable tower, pier or tunnel ventilators south of the Troy, NY Locks. Vessels may transit through any portion of the zone that extends into the navigable channel for the sole purpose of direct and expeditious transit through the zone so long as they remain within the navigable channel, maintain the maximum safe distance from the waterfront facility and do not stop or loiter within the zone.

(6) *New York City Passenger Ship Terminal, Hudson River, NY.* (i) *Location.* All waters of the Hudson River bound by the following points: From the northeast corner of Pier 96 where it intersects the seawall, thence west to approximate position 40°46′23.1″ N, 073°59′59.0″ W, thence south to approximate position 40°45′55.3″ N, 074°00′20.2″ W (NAD 1983), thence east to the southeast corner of Pier 84 where it intersects the seawall, thence north along the shoreline to the point of origin.

(ii) *Enforcement period.* This zone will be enforced whenever passenger vessels are pierside at Pier 88, 90 or 92 or whenever the passenger ship terminal or the adjacent Intrepid Sea, Air and Space Museum, Manhattan is being used as an Emergency Operations Center. The activation and termination of a particular zone will be announced in accordance with 33 CFR 165.7.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and 165.33 apply.

(2) Vessels not actively engaged in legitimate transfer operations shall not stop or loiter within that part of a commercial waterfront facility safety and security zone extending into the navigable channel, described in paragraph (a)(3) of this section, without the express permission of the Coast Guard Captain of the Port or the designated on-scene patrol personnel.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: December 30, 2002.

N.E. Merkle,

Captain, Coast Guard, Acting Captain of the Port, New York.

[FR Doc. 03–1285 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–01–003; FRL–7429–5]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves numerous revisions to the State of Oregon Implementation Plan submitted to EPA by the Director of the Oregon Department of Environmental Quality (ODEQ) on November 5, 1999, March 7, 2000, June 26, 2001, and November 4, 2002. The revisions were submitted in accordance with the requirements of section 110 and parts C and D of title I of the Clean Air Act (hereinafter CAA or Act).

DATES: This direct final rule will be effective March 24, 2003, unless EPA receives adverse comment by February 21, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon, Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ–107), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION: Please note that if EPA receives adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

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I. Rule Recodification

A. Description of Submittal

On November 5, 1999, ODEQ submitted a complete rule renumbering to EPA for approval into the SIP. The rules are renumbered and re-labeled to more accurately describe their content, and non-applicable and duplicative rules are repealed to eliminate conflicts and purge outdated requirements. These rule changes are non-substantive. The following Divisions were submitted as part of the rule renumbering, with an effective date under State law of October 14, 1999: 200 (General Air Pollution Procedures and Definitions), 202 (Ambient Air Quality Standards and PSD Increments), 204 (Designation of Air Quality Areas), 206 (Air Pollution Emergencies), 208 (Visible Emissions and Nuisance Requirements), 210 (Stationary Source Notification Requirements), 212 (Stationary Source Testing and Monitoring), 214

(Stationary Source Reporting Requirements), 216 (Air Contaminant Discharge Permits), 218 (Oregon Title V Operating Permits), 222 (Stationary Source Plant Site Emission Limits), 224 (Major New Source Review), 225 (Air Quality Analysis Requirements), 226 (General Emission Standards), 228 (Requirements for Fuel Burning Equipment and Fuel Sulfur Content), 232 (Emission Standards for VOC Point Sources), 234 (Emission Standards for Wood Products Industries), 236 (Emission Standards for Specific Industries), 240 (Rules for Areas with Unique Air Quality Needs), 242 (Rules Applicable to the Portland Area), 250 (General Conformity), 252 (Transportation Conformity), 256 (Motor Vehicles), 258 (Motor Vehicle Fuel Specifications), 262 (Residential Woodheating), 264 (Rules for Open Burning), 266 (Field Burning Rules (Willamette Valley)), and 268 (Emission Reduction Credits). Cross-reference tables for the old and new division numbers are available in the docket for this action.

B. Summary of Action

We are approving the recodified version of Oregon's rules to replace the old divisions in the current SIP. ODEQ submitted revised versions of Divisions 200, 202, 204, 210, 212, 214, 216, 222, 224, 226, 240, and 268 on June 26, 2001. The approval of these sections is discussed in section III below. In addition, in the process of reviewing the recodification submittal against the current SIP, some past errors were discovered. We are correcting these errors in this action, and they are described below, along with the exceptions to our approval of the recodification submittal.

Division 208, Visible Emissions and Nuisance Requirements; Division 256, Motor Vehicles; and Division 264, Rules for Open Burning (New Division Numbers)

We are not acting on Division 208 (Visible Emissions and Nuisance Requirements), Division 256 (Motor Vehicles), and Division 264 (Rules for Open Burning) in this action. These divisions have been subsequently revised by ODEQ and were submitted to EPA for approval on March 13, 2001 (Division 208), September 21, 2000 (Division 256), December 1, 2000 (Division 256), and June 26, 2000 (Division 264). We will be acting on Divisions 208, 256, and 264 in a separate rulemaking.

Division 218, Oregon Title V Operating Permits

We are taking no action on Division 218, Oregon title V Operating Permits, because Federal Operating Permit (title V) programs and rules are reviewed and approved by EPA through the title V approval process, which is independent of the SIP approval process.

Division 21, General Emission Standards for Particulate Matter (Old Division Number)

On May 13, 1998 (63 FR 26460), EPA approved the removal of section 21–025, Refuse Burning Equipment Limitations, which had been repealed by ODEQ in 1996. In 1999, this section was mistakenly re-approved back into the SIP. We are removing section 21–025 from the SIP in this action. Sections 21–015, 21–050, 21–055, and 21–060, Visible Air Contaminant Limitations and Fugitive Emissions, will not be removed from the SIP. These sections were renumbered to Division 208, which, as discussed above, will be acted on in a separate rulemaking. Sections 21–200 through 21–245, Industrial Contingency Requirements for PM–10 Nonattainment Areas, will also remain in the SIP at this time. These sections were repealed by ODEQ in 1998 and ODEQ submitted a PM–10 revocation package requesting the removal of these sections from the SIP. These sections will be acted on in a separate rulemaking.

Division 22, General Gaseous Emissions (Old Division Number)

In 1997, EPA approved section 22–108, Applicability of Alternative Control Systems, into the SIP. This approval was done in error as ODEQ repealed this rule in 1983. Therefore, we are removing section 22–108 from the SIP in this action.

Division 31, Ambient Air Quality Standards (Old Division Number)

We are removing section 31–035, Hydrocarbons, from the SIP. ODEQ repealed this outdated section in 1998. In 1978, EPA revoked the hydrocarbons standard from 40 CFR 50 and changed the precursor for ozone from hydrocarbons to volatile organic compounds (VOC). Therefore, a hydrocarbons standard is no longer necessary.

Division 232, Emission Standards for VOC Point Sources

40 CFR 52.1985 describes the conditions of our past approvals of ODEQ's VOC regulations. We are removing 40 CFR 52.1985 because the version of Division 232 that we are approving in this action satisfies these conditions.

Division 234, Emission Standards for Wood Products Industries (New Division Number)

We are not acting on references to total reduced sulfur (TRS) in this division because control of TRS is not appropriate for inclusion in the SIP because it is not a criteria pollutant.

Division 236, Emission Standards for Specific Industries (New Division Number)

We are approving this division, with the exception of references to Fluorides because control of Fluorides is not appropriate for inclusion in the SIP because it is not a criteria pollutant.

Division 250, General Conformity (New Division Number)

On September 27, 1995, ODEQ submitted a complete package of General Conformity rules (Division 20) to EPA for approval into the SIP. On October 8, 1998, ODEQ submitted further revisions to their General Conformity rules. This 1998 submittal only contained the sections that were revised. The 1998 submittal was approved in a **Federal Register** document on March 22, 2000 (65 FR 15244). The sections that were not revised in 1998 (20–1500, 20–1540, 20–1550, and 20–1560), however, were never approved as part of the SIP. The entire package of General Conformity rules was submitted in the recodification package in 1999, where Division 20 was renumbered to Division 250. The previously unapproved sections comply with the Federal rules under 40 CFR part 51, subpart W, so therefore we are now approving all sections of ODEQ's General Conformity rules, under the new Division 250. However, we are taking no action on section 250–0110, Savings Provision, which describes how the Federal and State rules work together, because it is not needed in the SIP.

Division 252, Transportation Conformity (New Division Number)

On March 22, 2000 (65 FR 15244), EPA approved ODEQ's Transportation Conformity rules into the SIP. We are approving the new rule numbers for the Transportation Conformity rules with the same exceptions as the original approval in 2000. In the March 22, 2000, **Federal Register** document there was a typographical error regarding an exception in the Incorporation by Reference (IBR). The exception should refer to section 750(5)(b) rather than

750(4)(b). We are correcting this error in this action.

II. Emission Standards for VOC Point Sources—Marine Vapor Loading

A. Description of Submittal

EPA redesignated the Portland area as attainment for ozone and approved a maintenance plan for the area on May 19, 1997 (62 FR 27204). The plan relied on reductions from a cross-Cascades pipeline that would have provided a cost effective alternative to barging gasoline to fuel terminals east of the mountains. In July 1999, planning for the pipeline was halted following an explosion from a pipeline rupture in Bellingham. The maintenance plan states that if the pipeline is not constructed, ODEQ will propose alternate control measures. In fulfilment of that commitment, ODEQ submitted a revision to the SIP on March 13, 2000, which included a Marine Vapor Loading rule, OAR 340–232–0110, and changes to definitions in OAR 340–232–0030. These revisions were adopted by Oregon's Environmental Quality Commission (EQC) on February 11, 2000, and became effective as a matter of State law on June 1, 2001.

OAR 340–232–0110 requires all bulk gas terminals in the Portland ozone air quality maintenance area to use pollution control equipment when loading gasoline onto river barges. If the previous load in the barge was gasoline, then vapor control is required when loading any subsequent petroleum product. Ship-to-ship transfers, known as ''lightering,'' are now required to be conducted with vapor control if either vessel is berthed at a terminal dock. Mid-river lightering transfers do not require vapor control but are prohibited on ''Clean Air Action Days''. The ''Clean Air Action Days'' program is outlined and described within ODEQ's Air Quality Public Education and Incentive Program that was reviewed previously by EPA as part of Oregon's SIP. The revisions to OAR 340–232–0030 include adding definitions for gas freed, lightering, loading event, marine tank vessel, marine terminal, marine vessel, and vapor tight.

B. Summary of Action

ODEQ submitted information showing that the emission reductions that will be achieved by its newly adopted marine vapor loading provisions are equivalent to those that would have resulted from the cross-Cascades pipeline. Section 183(f) of the 1990 Clean Air Act Amendments authorizes States to adopt standards that regulate emissions from marine vessels. Accordingly, we are approving this submittal (OAR 340–232–0030 and OAR 340–232–0110).

III. Permitting Rules

A. Description of Submittals

On June 26, 2001, the Director of the ODEQ submitted 17 Divisions of the Oregon Administrative Rules as revisions to the Oregon SIP. The submittal includes amendments to the following Divisions, effective July 1, 2001: 12 (Enforcement Procedure and Civil Penalties), 200 (General Air Pollution Procedures and Definitions), 202 (Ambient Air Quality Standards and PSD Increments), 204 (Designation of Air Quality Areas), 210 (Stationary Source Notification Requirements), 212 (Stationary Source Testing and Monitoring), 214 (Stationary Source Reporting Requirements), 216 (Air Contaminant Discharge Permits), 222 (Stationary Source Plant Site Emission Limits), 224 (Major New Source Review), 226 (General Emission Standards), 240 (Rules for Areas with Unique Air Quality Needs), and 268 (Emission Reduction Credits); new Divisions 209 (Public Participation) and 225 (Air Quality Analysis Requirements); and the revocation of Division 14 (Procedures for Issuance, Denial, Modification, and Revocation of Permits). A comprehensive summary of the rule changes, including rule-by-rule descriptions, is included in the SIP submittal (Attachment 3.3).

On November 4, 2002, the Director of the ODEQ submitted the PM–10 maintenance plans for the Grants Pass and Klamath Falls nonattainment areas. This submittal included revisions to Divisions 204–0030 (Designation of Nonattainment Areas), 204–0040 (Designation of Maintenance Areas), 222–041 (Source Specific Annual PSEL), 224–0060 (Requirements for Sources in Maintenance Areas), 224–0070 (Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas), 225–0020 (Definitions), 225–0050 (Requirements for Analysis in PSD Class II and Class III Areas), 225–0060 (Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas), and 225–0090 (Requirements for Demonstrating a Net Air Quality Benefit) and a new section 225–0045 (Requirements for Analysis in Maintenance Areas), effective October 8, 2002. These Divisions were revised as part of the maintenance plan efforts, and sections 225–0020(10) and 225–0090 (1)(c) were further revised as part of a temporary rulemaking to change the applicability date for the new ozone precursor significant impact distance from January 1, 2003, to January 1, 2004. This temporary rulemaking is effective from October 8, 2002, through April 6, 2003. EPA will be acting on the maintenance plans and redesignation requests (including sections 204–0030 and 204–0040) in a separate rulemaking.

B. Background

The current ODEQ new source review (NSR) program and Federally-enforceable state operating permit (FESOP) program were developed in 1981 and approved by EPA on August 13, 1982 (47 FR 35191). Although there have been a number of minor revisions to Oregon's permitting rules over the years, there had been no comprehensive review or revision of the rules. Over the years, ODEQ, EPA, industry, and others identified a number of concerns with the rules that were usually addressed through ODEQ internal implementation guidance rather than through rulemaking. However in 1998, ODEQ decided to undertake a comprehensive review of its existing permitting rules.

A workgroup of representatives from ODEQ and the Lane Regional Air Pollution Authority, with input from EPA, identified permitting rule problems and recommended solutions, building on recommendations of the Oregon Industrial Source Advisory Committee in 1994–1995 and an air quality process improvement team in 1998. An extensive list of rule changes was suggested by the workgroup and then reviewed and critiqued by ODEQ permit writers, inspectors, and management to develop final recommendations.ODEQ's final recommendations were discussed in detail with industrial source and environmental representatives during a variety of workgroup and roundtable meetings. In addition, the recommendations were presented and discussed with permitted sources, source representatives, and the public at several locations in Oregon prior to publication of the proposed rules for public comment.

The rulemaking package finally adopted by ODEQ and submitted to EPA as a SIP revision includes numerous changes to several different permitting programs—minor NSR, PSD, part D (nonattainment area) NSR, visibility permitting, state operating permits, emissions trading, and other permit-related rules. The changes were intended to clarify and update Oregon's existing permitting rules and to provide additional tools to streamline the permitting and planning process, while obtaining the same air quality benefits

as the existing rules. The changes include:

(1) Simpler permitting procedures;
(2) Greater use of general permits;
(3) Less need for permit revisions;
(4) Simpler emission trading options;
(5) Improved construction approval procedures;
(6) Better targeted public involvement;
(7) Simpler fees and billing; and
(8) Clearer applications and other requirements.

EPA has reviewed the amendments to the ODEQ rules and has determined that they meet EPA's requirements under sections 110, part C and part D of title 1 of the Clean Air Act. EPA is therefore approving them as revisions to the Oregon SIP.

C. Key Changes to Oregon's SIP

The docket includes a technical support document which describes in more detail the substantive changes to the Oregon rules that have been submitted by Oregon as revisions to the SIP, EPA's evaluation of the changes, and the basis for EPA's action. A summary of the key changes to Oregon's rules and EPA's proposed action follows:

1. Division 200 General Air Pollution Procedures and Definitions

This Division contains ODEQ's general air quality definitions (section 0020), a list of abbreviations and acronyms (section 0025), general exceptions (section 0030), provisions for adopting and submitting the Oregon SIP (section 0040), provisions for compliance schedules (section 0050), and rules for conflicts of interest and makeup of boards (sections 0100 to 0120).

EPA is taking no action on section 0040 State of Oregon Clean Air Act Implementation Plan because this section describes the State's procedures for adopting its SIP and incorporates by reference all of the revisions adopted by the EQC for approval into the Oregon SIP (as a matter of state law). This is not what is actually approved by EPA as the Federally-enforceable SIP for Oregon, so we are therefore taking no action on it. Previously, section 0040 had been approved by EPA into the SIP in error, and we are correcting that error in this action. EPA is taking no action on section 0050 Compliance Schedules because any compliance schedule established by Oregon under this provision must be submitted to, and approved by, EPA before it will be Federally enforceable or change the requirements of the EPA-approved SIP (*see* 40 CFR 51.260 and 40 CFR 51.102(a)(2) and (c)). We reviewed sections 200–0100, 200–0110, and 200-0120 which cover conflicts of interest and found them to meet the requirements of section 128 of the CAA. These provisions will not be incorporated by reference, however.

A few new or revised definitions merit discussion:

Adjacent—This definition was added to clarify that facilities that are located near each other and which are interdependent will be considered to be adjacent for purposes of the definition of the term ''source.''

Federal major source—This new definition defines the size of major stationary sources (as that term is defined in the ODEQ rules) that will be subject to certain provisions of the ODEQ permit rules. The size thresholds used to define this term are the same as those in EPA's PSD rules (40 CFR 51.166(a)(1), specifically, the 100 ton per year and 250 ton per year thresholds.

Generic PSEL—This new definition establishes the annual (12-month rolling average) emission limits that will be included in general ACDP's and other permits for pollutants that are emitted in less than significant emission rates. Generic PSEL's will limit the potential to emit of any pollutant to less than the Oregon major source thresholds.

Major modification—This definition was revised to better implement the ODEQ accumulation approach to determining when a major modification will occur. It also clarifies when increases in emissions that do not result from physical or operational changes are not considered to be modifications and are regulated under the PSEL rule.

Modification—This new definition was added to define the term modification for the minor source construction permitting program. The definition is essentially the same as EPA's definition of the term ''modification'' in 40 CFR part 60 (*i.e.*, the NSPS definition).

Netting basis—This new definition was added to better implement the ODEQ definition of ''major modification.'' It defines both the baseline emissions from which increases are measured to determine if changes are subject to review, as well as the process for re-establishing the baseline after changes have been through the major source permitting process.

Significant emission rate—This definition was revised to delete the hazardous air pollutants from table 2; to clarify that for pollutants not listed in table 2, the significant emission rate is zero unless ODEQ has established a rate for that pollutant; and to revise table 3 so that the lower significant emission rates apply only to the Medford-Ashland AirQuality Maintenance Area and not to the Klamath Falls Urban Growth Area and the Lakeview PM–10 Nonattainment Area.

Unassigned emissions—This new definition defines how the quantity of unassigned emissions is to be determined for purposes of the Plant Site Emission Limit rule.

2. Division 204 Designation of Air Quality Areas

This Division identifies the carbon monoxide, particulate matter (PM–10) and ozone nonattainment areas in the State of Oregon. The Division was amended to reinstate the nonattainment designation for the Salem Nonattainment Area for Ozone as a result of the reinstatement of EPA's one-hour ozone standard.

3. Division 209 Public Participation

This is a new Division that contains all of the public participation procedures and requirements for issuing permits that used to be contained in Divisions 14, 216, 218, and 224. It establishes public participation procedures for four categories of permit actions. The permitting program rules assign permit actions to the appropriate public participation procedures established in this Division. The four categories of permit actions and associated procedures are:

Category I—changes that are not environmentally significant and do not involve choices made by ODEQ (*e.g.*, facility name change). These actions require no prior public notice, but a list of permit actions will periodically be made available for public review after the changes have been made.

Category II—changes that have the potential for low to medium environmental and public health significance (*e.g.*, renewing a simple permit). These actions will require a 30-day public notice period, but not a public hearing.

Category III—changes that have the potential for medium to high environmental and public health significance (*e.g.*, increasing the plant site emission limit). These actions will require a 35-day public notice period and a hearing if requested. A hearing can also be pre-scheduled by ODEQ.

Category IV—changes that have the potential for high environmental and public health significance (*e.g.*, siting a new major facility). These actions will require a public notice when the application is submitted and an informational meeting prior to drafting

a proposed permit. Once the proposed permit is drafted, a 40-day public notice period and a public hearing will be required.

If a permitting action is not specifically assigned to a category, then it will be processed under Category III.

EPA has reviewed these public participation procedures, and the assignment of permit actions in each of the separate permitting rules, and finds them to be consistent with the EPA requirements for public participation set forth in 40 CFR 51.161 for minor source permits to construct and nonattainment area (part D) NSR, 40 CFR 51.166(q) for PSD permits, the June 28, 1989, **Federal Register** (54 FR 27274) for Federally-enforceable State operating permits, and the December 4, 1986, Federal Register (51 FR 43814) for generic bubble rules.

4. Division 210 Stationary Source Notification Requirements

This Division contains a registration program for sources not subject to one of the Oregon operating permit programs (air contaminant discharge permit or title V operating permit programs) and also contains ODEQ's ''minor source'' preconstruction permitting program, titled ''Notice of Construction and Approval of Plans.'' The existing notice of construction and approval of plans provisions have been repealed and replaced with provisions intended to improve the effectiveness of the program. The new provisions also include the ''Notice of Approval'' provisions originally located within Oregon's title V operating permit rules.

The notice of construction requirements apply to all stationary sources and air pollution control equipment except those that are specifically exempted in the rules. These exemptions include:

(1) Equipment used in agricultural operations and the growing or harvesting of crops or the raising of fowls and animals;

(2) Agricultural land clearing operations or land grading;

(3) Residential heating for dwellings for four families or less;

(4) Other residential activities at dwellings for four families or less; and

(5) Categorically insignificant activities.

The rules require that no person can construct a new stationary source, modify an existing stationary source, or construct or modify air pollution control equipment without first notifying the ODEQ. It is important to note that the definitions of ''stationary source'' and ''modification'' that apply in this program are essentially the same as EPA's definitions of these terms in 40 CFR part 60 (New Source Performance Standards).

The rules classify construction and modification into four types—Type 1 which are changes that are truly *de minimis*; Type 2 which are changes that are more than *de minimis*, but less than significant; Type 3 which are changes that are significant, but not new major sources or major modifications; and Type 4 which are changes that are significant and may be new major sources or major modifications.

The rules require Type 1 and 2 changes to provide a notice to ODEQ before constructing or modifying a stationary source or air pollution control equipment. Type 3 or 4 changes must submit an application for either a construction ACDP, new ACDP, or modified ACDP as appropriate. It is important to note that the rules include a provision that waives the notice and application requirements for changes that are pre-approved (*i.e.*, changes that have already been approved in accordance with the provisions of this Division and/or Division 224 New Source Review) in an ACDP or title V operating permit.

Type 1 changes may begin construction or modification 10 days after the ODEQ receives the notice unless the ODEQ notifies the owner or operator that the change is not a Type 1 change. Type 2 changes may begin construction or modification 60 days after the ODEQ receives the notice or the date that ODEQ approves the change in writing, whichever is sooner. Type 3 changes must obtain either a construction ACDP or a new or modified standard ACDP before proceeding with construction or modification. Type 4 changes must obtain a new or modified standard ACDP before proceeding with construction or modification. Type 4 changes may also be subject to the major source ''New Source Review'' rules (OAR 340 Division 224).

The rules include a requirement for the owner or operator to notify ODEQ that construction or modification has been completed within 30 days and on a form furnished by ODEQ. This requirement can be changed, however, in the construction permit or approval to allow for a different time period or reporting format. ODEQ can also issue an order prohibiting the construction or modification if it finds that it is not in accordance with applicable requirements.

Finally, the rules state that the approval to construct does not provide approval to operate unless otherwise allowed by either the ACDP or title V operating permit rules. Depending upon the type of change and the permit status of the source, a new or modified ACDP or a modified title V permit may be needed before the change can be operated. Changes at title V operating permit sources are governed by Oregon's title V operating permit program rules (OAR 340–218–0190(2)).

Although this new rule is structured quite differently from Oregon's previous program, with one exception, it requires approval prior to construction or modification for the same universe of stationary sources as does the current SIP-approved program. The new rule now exempts categorically insignificant activities from the minor source construction program. Oregon's list of categorically insignificant activities was adopted initially as part of its title V operating permits program and was approved by EPA as meeting the requirements of 40 CFR part 70. Oregon's list of categorically insignificant activities is limited to activities that have only trivial emissions or activities that are not appropriate for regulating under a construction permit program (*e.g.*, accidental fires, motor vehicles). EPA has determined that the Oregon rules for ''Notice of Construction and Approval of Plans'' comply with EPA's requirements for minor new source review programs at 40 CFR 51.160 through 51.164.

5. Division 212, Stationary Source Testing and Monitoring

This Division contains ODEQ's provisions for emission testing and monitoring, including Oregon's rules for ''Compliance Assurance Monitoring.'' The division also contains ODEQ's provisions regulating the use of stack heights and dispersion techniques to comply with ambient standards. The Division was amended by relocating section 0160 Records; Maintaining and Reporting to Division 214. Numerous editorial changes and corrections to citations were made throughout. Oregon has adopted it's own rules for implementing EPA's Compliance Assurance Monitoring regulations and has submitted them for inclusion in the SIP. Because EPA's regulations are nationally applicable, both Oregon's rules (OAR 340–212–0200 through 0280) and EPA's rules (40 CFR part 64) apply to title V sources in Oregon. As such, EPA is approving the Oregon Compliance Assurance Monitoring rules as SIP strengthening provisions.

EPA is approving ODEQ's rules for emission testing. As provided in 40 CFR 51.212(c) and consistent with EPA guidance for alternative test methods for New Source Performance Standards and

National Emission Standards for Hazardous Air Pollutants, however, major changes to test methods for SIP-approved emission limits must be approved by EPA. *See also* ''How To Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants,'' February 1999.

6. Division 214, Stationary Source Reporting Requirements

This Division contains ODEQ's provisions for reporting and recordkeeping, information requests (CAA section 114 authority), credible evidence, business confidentiality, emission statements, and excess emissions. Numerous editorial changes were made throughout. The provisions for Records; Maintaining and Reporting were amended and relocated to section 0114 from Division 212.

On October 17, 2002, Oregon withdrew the provisions for excess emissions (OAR 340–214–0300 through 0360) because ODEQ was beginning the process of revising those rules. As a result, the current excess emissions provisions in OAR 340 Division 28 will remain the SIP-approved version of these provisions.

7. Division 216, Air Contaminant Discharge Permits

This Division is the ODEQ Federally-enforceable State operating permit (FESOP) program, and is also the administrative permit mechanism used to implement the notice of construction and major new source review programs. This Division has been revised to clarify the different types of ACDP's, the requirements for applying for ACDP's and the processes for issuing and modifying ACDP's. The rule has also been revised to clarify when the ODEQ or the Lane Regional Air Pollution Authority has permitting responsibility for portable sources.

The rules now establish 6 types of ACDP's:

(1) Construction ACDP, which is used for approving Type 3 changes;

(2) General ACDP, which is for categories of sources for which individual permits are unnecessary to protect the environment;

(3) Short Term Activity ACDP, which is a letter permit for unexpected or emergency activities, operations or emissions;

(4) Basic ACDP, which is a letter permit for sources and activities listed in Table 1 part A;

(5) Simple ACDP, which is a permit that contains all relevant applicable requirements, generic PSEL's, and appropriate testing, monitoring, recordkeeping, and reporting requirements.

(6) Standard ACDP, which is a permit that contains all applicable requirements, source-specific PSEL's or generic PSEL's as appropriate, and appropriate testing, monitoring, recordkeeping, and reporting requirements. Sources listed in table 1 part C must obtain a Standard ACDP.

Basic ACDP's are available only for sources whose emissions are less than *de minimis*. Sources and activities listed in table 1 part B which do not qualify for a General or Simple ACDP must obtain a Standard ACDP. Any source not required to obtain a Standard ACDP may choose to obtain a Standard ACDP. The primary difference between a Simple ACDP and a Standard ACDP is that Simple ACDP's can only include generic PSEL's (the significant emission rate less one ton per year), not source-specific PSEL's, and have a netting basis of zero (see discussion in section III.C.9 below).

The rules have been revised to clarify the general application requirements for new permits, permit renewals, and permit modifications, along with the process for determining the completeness of applications and for obtaining additional information during permit application review. The rules also include specific provisions for the application, content, and issuance of each type of ACDP, including the public comment process that will be followed for permit issuance and permit modifications. The provisions for General ACDP's include both the process for ODEQ issuance of a General ACDP as well as the procedures for sources to be assigned to the General ACDP.

The rules were also revised to clarify the requirements for permitting multiple sources at a single adjacent or contiguous site, delete obsolete provisions for sources to obtain limits on potential to emit prior to the date for initial title V permit applications, add provisions for terminating or revoking an ACDP, add provisions for ODEQ initiated permit modifications, simplify fee requirements, clarify how fees may be reduced for sources that are temporarily suspending activities, and deleting obsolete provisions regarding ACDP's issued by the Lane Regional Air Pollution Authority.

Finally, table 1, which previously contained the list of source types required to have ACDP's along with the associated fees, has been revised and restructured into two tables—table 1 which lists the source types required to have ACDP's and table 2 which establishes initial permitting application fees, annual fees, specific activity fees, and late fees. While the fee structure has been substantially revised, the ODEQ has striven to make sure the revisions are revenue neutral.

Although the Oregon ACDP program has been significantly revised to clarify applicability, establish several different types of permits, and to streamline the permitting process, it continues to comply with EPA's requirements for FESOP programs as set forth in the June 28, 1989, **Federal Register** (54 FR 27274).

8. Division 222, Stationary Source Plant Site Emission Limits

This Division contains the ODEQ program for managing airshed capacity by regulating increases and decreases in air emissions of permitted sources through a Plant Site Emission Limit (PSEL). PSEL's are used to protect ambient air quality standards, prevent significant deterioration of air quality, and to ensure protection of visibility. It is important to note that PSEL's are not plantwide applicability limits (PAL's) for purposes of major new source review (*see* discussion in section III.C.9. below).

The Division has been extensively revised to clarify that PSEL's are not required for pollutants that are emitted at less than *de minimis* levels, for Short Term Activity and Basic ACDP's, or for hazardous air pollutants, establish the concept of a generic PSEL and the criteria for establishing such, clarify the process for establishing and revising PSEL's, change the requirements for short-term PSEL's, add provisions for addressing ''unassigned'' emissions (the difference between a source's netting basis and it's current potential to emit (PTE) when the netting basis exceeds the current PTE), and add provisions for addressing how PSEL's are treated when sources combine or split.

Generic PSEL's are used for sources with a capacity less than the Significant Emission Rate (SER) unless the source has a netting basis and requests a source specific PSEL. Generic PSEL's may be used for any category of ACDP or title V permit. Generic PSEL's are set by rule at 1 ton less than the SER (except for lead, municipal waste combustor organics, and PM–10 in Medford which are set slightly below the SER). Importantly, a source with a generic PSEL for a pollutant will have a netting basis of zero and will not have any emissions that can be used for netting (*see* discussion of netting basis in section III.C.9 below). Accumulated emission increases from physical or

operational changes that exceed the SER will be subject to NSR.

Short-term PSEL's were previously required to be included in all permits for pollutants with short-term ambient air quality standards. The rules have been revised to require short-term PSEL's only for pollutants for which a short-term SER has been established (ODEQ establishes short-term SER's on an area specific basis as needed to ensure attainment and maintenance of a short-term NAAQS). The rules also have been revised to include procedures and criteria to be used when revising a short-term PSEL (previously, the rules only included criteria applicable to the annual PSEL's). Although this change will allow most ACDP's and title V operating permits to be issued in the future without including short-term PSEL's, ACDP's and title V operating permits will still need to include short-term PSEL's for areas where ODEQ has previously relied upon them to demonstrate attainment and maintenance of the NAAQS.

The general requirements for all PSEL's have been revised to clarify that annual PSEL's will be established on a rolling 12-month basis and to require sources to maintain either a Standard ACDP or a title V operating permit in order to have a netting basis (and a source-specific PSEL). It is ODEQ's intention that the PSEL function as a limit on a source's PTE.

EPA has reviewed the provisions of the PSEL rule and finds that it establishes limits on a source's PTE that are Federally enforceable and enforceable as a practical matter (with adequate requirements for monitoring, recordkeeping, and reporting in section 0080) in accordance with EPA's guidance for limiting PTE. Therefore, EPA is approving this rule such that PSEL's in ACDP's and title V operating permits that comply with the requirements of this rule will be considered to be limits on a source's PTE.

New provisions for addressing unassigned emissions have been added. The purpose of this section is to track and manage the difference between the netting basis and what a source could emit based on its current physical and operational design. This section essentially limits unassigned emissions to no more than the SER, and establishes the process for reducing unassigned emissions and the netting basis when permits are renewed, modified, or reopened. Unassigned emissions may only be used for netting purposes, and cannot be sold or banked. Emissions that are removed from the netting basis cannot be used in future netting actions. The provision for temporary PSD increment allocation has been repealed. The effect of this repeal is that all requested increases in PSEL's will be evaluated for compliance with applicable PSD increments using the same criteria.

The provisions for voluntary PSEL's for hazardous air pollutants (OAR 340–222–0060) has been revised to reflect the change to a rolling 12-month average and to accommodate generic PSEL's. Because this provision does not directly relate to the SIP, EPA is taking no action on this portion of the PSEL rule. The effect of this is that HAP PSEL's established in ACDP's will not be Federally-enforceable limits on a source's PTE. However, for purposes of the Federal hazardous air pollutant program under section 112 of the CAA and for purposes of title V of the CAA, limits on PTE need not be Federally enforceable at this time.

It is important to note that the rule explains how insignificant activities are addressed in plant-site emission limits. Categorically insignificant activities are generally not considered when establishing PSEL's and demonstrating compliance with PSEL's. However, emissions from aggregate insignificant activities are considered. Importantly, the rules state that all emissions from insignificant activities must be included when determining whether a source or modification is major for purposes of NSR or PSD. This means that a source which requests a PSEL below the major source thresholds to avoid NSR or PSD must include emissions from all insignificant activities in the PSEL.

The rule includes a new section with specific requirements for ensuring compliance with PSEL's. It requires sources to monitor emissions or other parameters on a frequency and with averaging periods sufficient to demonstrate compliance with the annual PSEL on a monthly basis and with short-term PSEL's. Sources are required to maintain adequate records and to submit annual reports as required in ACDP's or title V operating permits. Specific requirements for monitoring, recordkeeping, and reporting will be included in all permits with PSEL's.

Finally, the rule includes a new section which specifies how PSEL's and netting bases will be treated when two or more sources combine into one (*e.g.*, when one source buys a neighboring plant), or when one source splits into two or more sources (*e.g.*, when one source sells a portion of its plant to another company).

Overall, the revisions to ODEQ's rules for Plant Site Emission Limits have clarified and strengthened the rules. Although the new provisions for generic PSEL's may allow insignificant increases at some existing non-major sources, the Oregon PSEL's still establish a more rigorous mechanism for regulating non-construction emissions increases at existing sources than do most other State programs. Furthermore, the new provisions for unassigned emissions will reduce PSEL's for major sources now and into the future. EPA is therefore approving the revisions to the PSEL rules.

9. Division 224, Major New Source Review

This Division contains the ODEQ major source permit to construct programs as required by title I, parts C and D of the CAA. It requires an ACDP prior to beginning construction on a new major source or major modification. This Division applies to new major sources and major modifications and requires that no owner or operator begin actual construction without first having received an ACDP and having satisfied the requirements of this Division.

Revisions to this Division must be evaluated in the context of the currently-approved ODEQ NSR rule. ODEQ's NSR rule differs from EPA's regulations in a number of fundamental ways. EPA evaluated and initially approved the ODEQ NSR program on August 13, 1982 (47 FR 35191), as being equivalent or more stringent than EPA's regulations on a program basis. The ODEQ NSR program, which is closely linked to the ODEQ PSEL program, does not subject the same sources and modifications to major NSR as would EPA's rules. The ODEQ program has lower major source thresholds, so smaller new sources and changes to smaller existing sources are subject to review. However, the ODEQ program utilizes a plant-wide cap approach to defining major modification rather than a contemporaneous net emissions increase approach as does EPA's rules. The effect of this plant-wide cap approach is that some changes which would be subject to review under EPA's rules are not subject under ODEQ's rules. However, some changes which would not be subject to review under EPA's rules are subject under ODEQ's rules. In addition, changes which would result in increased emissions, but would not be considered modifications under EPA's rules, are reviewed for compliance with standards and increments under ODEQ's PSEL program. Overall, EPA when it initially approved Oregon's program in 1982 determined that the Oregon program would review and control emissions from new and modified sources equal to

or better than EPA's program regardless of the fact that some specific changes might not be subject to NSR in Oregon that would be under EPA's program.

EPA has evaluated the changes to the ODEQ program and determined they would improve the implementation and enforcement of the current ODEQ approach and that they would not result in any relaxation that could impair the ability of the program to protect NAAQS, PSD increments, and visibility in Class I areas. EPA is therefore approving the changes. Note that, with respect to Oregon's rules relating to new source review, EPA is taking no position on whether Oregon will need to make changes to its new source review rules to meet requirements that EPA promulgates as part of new source review reform.

a. Nonattainment Area (Part D) NSR

Under ODEQ's rules, all new major sources or major modifications in nonattainment areas must comply with the Lowest Achievable Emission Rate (LAER). Because the ODEQ definition of major modification accumulates emission increases and decreases since the baseline date or last NSR permit, emission units that were constructed or modified in the past as minor changes are subject to major NSR when the accumulated increases exceed the SER. As such, the ODEQ rule includes special provisions for applying LAER retroactively to these new or modified emission units, including the consideration of whether the retrofit controls are technically feasible. Because EPA's regulations would not require LAER to be required retroactively for minor changes that were not part of the current permitting action, the additional ODEQ criteria for applying LAER to these changes does not conflict with the CAA or EPA's requirements.

Under ODEQ's rules, all new major sources and major modifications in nonattainment areas must also provide emissions offsets and demonstrate that a net air quality benefit will be achieved. Under ODEQ's rules, however, only Federal major sources in nonattainment areas must evaluate alternative sites, sizes, production process and environmental control techniques and demonstrate that the benefits of the proposed source or modification will significantly outweigh the environmental and social costs (*see* section 173(a)(5) of the Act). Similarly, only Federal major sources must demonstrate that all major sources owned or operated with Oregon are in compliance or on a compliance schedule (*see* section 173(a)(3) of the Act). Finally, only Federal major sources must comply with the requirements for visibility protection (see 40 CFR 51.307(b)(2) and (c)).

The rule also includes a special exemption for the Salem ozone nonattainment area which exempts new major sources and major modifications from the offset requirement. The Salem ozone nonattainment area is considered to be a rural ozone nonattainment area under EPA's policy in effect in 1978 when the area was designated nonattainment.

Finally, the revisions to the definition of significant emission rate changed the size threshold for major sources in the Klamath Falls Urban Growth Area and the Lakeview PM–10 Nonattainment Area. EPA is approving these revisions because they only affect future permitting and the revised major source size thresholds are still lower than the Federal major source size thresholds.

b. Maintenance Area NSR

The ODEQ rules also include provisions for new major sources and major modifications in maintenance areas (areas that were designated nonattainment for particulate matter, carbon monoxide, or ozone, but have been redesignated to attainment). This provision essentially merges several of the concepts of PSD and nonattainment area NSR for use in maintenance areas. All new major sources and major modifications must apply the Best Available Control Technology (BACT) for the maintenance pollutant. The scheme for the application of BACT is similar to the scheme for the application of LAER in nonattainment areas with respect to retroactive application of BACT to emission units that have already been constructed or modified.

All new major sources and major modifications must either obtain emission offsets and provide for a net air quality benefit, or must obtain an allocation of the growth allowance (for carbon monoxide or ozone areas only) established in the approved maintenance plan (if one was established). However, a carbon monoxide major source which demonstrates that it would have an insignificant impact at all locations is exempt from the requirement to obtain offsets or a growth allowance allocation. Similarly, a PM–10 major source is exempt from the requirement to obtain offsets if it demonstrates that it would not cause or contribute to a cumulative air quality impact greater than certain ambient ceilings specified in the rules. Importantly, the rules require all Federal major sources to comply with the PSD requirements in addition to the maintenance area provisions.

The maintenance area provisions also include a contingency plan component. If the contingency plan in an applicable maintenance plan is implemented due to a violation of an ambient air quality standard, the requirements of the maintenance area NSR program become more stringent until a revised maintenance plan is approved by EPA. Instead of BACT, new major sources and major modifications are required to apply LAER; growth allowances may no longer be used to meet the offset requirement; and the exemption for carbon monoxide sources would no longer apply. Finally, the rule clarifies that the nonattainment area provisions continue to apply in areas with pending redesignation requests until the area is formally redesignated to attainment by EPA.

c. Attainment Area PSD/NSR

The ODEQ rules include provisions for new major sources and major modifications in attainment and unclassifiable areas. However, these provisions are applicable only to ''Federal major sources'' as that term is defined in the ODEQ rules. The definition of ''Federal major sources'' is essentially the same as the EPA definition of major stationary source in 40 CFR 51.166(a)(1) (the PSD definition) with one significant difference. Because the ODEQ rules specifically require that fugitive emissions be counted in determining major source status for all sources, the ODEQ PSD rules will potentially require more sources to be subject to PSD than required by EPA's rules.

Note that the provisions applicable to new major sources and major modifications that are not Federal major sources are found in the provisions for standard ACDP's and PSEL's. All new major stationary sources and major modifications need to obtain an ACDP and comply with the applicable requirements of those Divisions. For ODEQ major sources located in attainment or unclassifiable areas, the ACDP and PSEL rules require that the owner or operator demonstrate that the new source or modification would not cause or contribute to a violation of the ambient standards and applicable PSD increments.

New major sources and major modifications must apply BACT for each pollutant emitted in significant amounts. The scheme for the application of BACT is similar to the scheme for the application of LAER in nonattainment areas with respect to retroactive application of BACT to

emission units that have already been constructed or modified. New major sources and major modifications must also provide an analysis of air quality impacts, including ambient air quality monitoring, in accordance with the requirements of Division 225 (*see* section III.C.10 below). New major sources and major modifications that significantly impact a PM–10 maintenance area must also meet the requirements of OAR 340–224–0060(2) Air Quality Protection. Finally, the rules include provisions for temporary and portable major sources, and for temporary construction related emissions. The rules also clarify how fugitive emissions and secondary emissions are counted for applicability purposes and for inclusion in ambient impact analyses.

The current SIP-approved rules exempt new major sources and major modifications that are not Federal major sources from the requirements of BACT, pre-application and post-construction air quality monitoring, and the additional impacts analysis. This exemption was only available if the source demonstrated that it did not cause or contribute to any violation of a NAAQS or PSD increment. The current SIP-approved rules did not exempt any new major source or major modification from the Class I area provisions of the rules. The revised rules exempt new major sources and major modifications that are not Federal major sources from all of the PSD requirements, including the Class I area provisions. Furthermore, the revised rules do not include the eligibility criteria regarding violations of the NAAQS and PSD increments. Although these changes will have the effect of relaxing the ODEQ major source NSR rule, EPA believes that they are approvable. First, a State is not required to apply PSD requirements to sources which are not Federal major sources. Second, ODEQ's permit to construct program for non-Federal major sources still complies with EPA's requirements in 40 CFR 51.160 through 51.164 and ensures that new and modified major sources will not cause or contribute to violations of any NAAQS.

d. State-Federal Relationship in New Source Review

In approving the Oregon new source review rules, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of the Oregon new source review rules does not divest EPA of the duty to continue appropriate oversight to insure that permits issued by Oregon are consistent with the requirements of the Act, EPA regulations, and the SIP. EPA's authority to oversee permit program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not ''conform to the requirements of'' the PSD program. Similarly, section 113(a)(5) of the CAA provides for administrative orders and civil actions whenever EPA finds that a State ''is not acting in compliance with'' any requirement or prohibition of the CAA regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by States. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is ''not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan.''

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the State decision fails to comply with applicable requirements. In determining whether a title V permit incorporating PSD or part D NSR provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining BACT or LAER, assessing air quality impacts, meeting Class I area requirements, and other PSD or Part D requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD or Part D NSR permit were properly incorporated into the title V operating permit.

10. Division 225, Air Quality Analysis Requirements

This new Division contains all of the modeling, monitoring, impact analysis, and net air quality benefit requirements that are necessary to ensure ambient air quality requirements are met in the permitting process. These requirements were previously located in Division 224. The Division also includes new provisions which specify the technical information and processes to be used in air quality impact analyses.

The Division includes sections that: (1) Specify the information required to be submitted in permit applications; (2) require compliance with EPA's Guidelines on Air Quality Models (40 CFR part 51, appendix W); (3) establish requirements for demonstrating compliance with the ambient air quality ceilings, standards and increments in maintenance areas; (4) establish the requirements for demonstrating compliance with standards and increments in Class II and Class III areas, including the requirements for pre-application and post-construction monitoring; (5) establish requirements for demonstrating compliance with standards and increments in Class I areas; (6) establish requirements for demonstration compliance with air quality related values (including visibility) protection; and (7) establish the requirements for demonstrating that offsets provide for a net air quality benefit.

The provisions for air quality impact analyses for Class I, Class II, and Class III areas comply with EPA's requirements for SIP PSD programs (40 CFR 51.166) for air quality impact analyses and with EPA's requirements for visibility protection (40 CFR 51.307). The provisions for Class I areas and the provisions for protection of air quality related values (including visibility) also conform to the Federal Land Manager recommendations in the FLAG Report. Importantly, the provisions for Class I areas include PSD Class I Significant Impact levels that are the same as those EPA has proposed for 40 CFR 51.166 and 52.21 (61 FR 38250, July 23, 1996). EPA is therefore approving these provisions, including the Class I area significant impact levels, as a revision to the Oregon permitting program.

The provisions for demonstrating net air quality benefit comply with the CAA and EPA's requirements for emission

offsets (section 173 of the Act, 40 CFR 51.165(a) and 40 CFR part 51, appendix S (Emission Offset Interpretative Ruling)). EPA is therefore approving these provisions as complying with part D of title 1 of the Act.

Note that EPA is approving both the permanent versions of sections 225–0020(10) and 225–0090(1)(c) and the temporary versions of these provisions for the time period they are in effect.

11. Division 226, General Emission Standards

This Division contains emission standards and requirements of general applicability, including requirements for highest and best practicable treatment and control (section 0100), pollution prevention (section 0110), operating and maintenance (section 0120), and typically achievable control technology (section 0130). This Division also includes authority for ODEQ to impose additional requirements on a permit-by-permit basis (section 0140) and to approve alternative emission controls (bubbles) (section 0400). Finally, this Division includes the statewide particulate emission limits for process equipment and other sources (except for fuel or refuse burning equipment).

The Division was amended by revising the provisions for alternative emission controls (bubbles) to comply with EPA's Final Emissions Trading Policy Statement for generic bubble rules (51 FR 43814, December 4, 1986). Oregon's previous rules had been approved as meeting EPA's requirements for generic bubble rules under the April 7, 1982, Emission Trading Policy Statement (47 FR 15076). In order to address the requirement for replicable procedures, the rule has been revised to exclude trades involving pollutants other than ozone precursors from the generic bubble approach. As such, bubbles involving ozone precursors (VOC and NO_X) can still be done without case-by-case SIP revisions, but bubbles for all other pollutants will need to be submitted to, and approved by, EPA before they become the applicable requirements of the Oregon SIP.

Note that EPA is approving section 0140 (authority to impose additional requirements on a permit-by-permit basis) because any requirement established under this provision would be in addition to existing requirements and could not change any existing requirement. However, ODEQ would still need to submit requirements established under this provision for inclusion in the SIP if such requirements are necessary to comply with any specific provision of the CAA or EPA regulations.

12. Division 268, Emission Reduction Credits

This Division contains ODEQ's procedures for generating, banking, and using emission reduction credits (ERC's). The Division was revised to simplify the program, make it consistent with changes to ODEQ's Plant Site Emission Limit rule (specifically the treatment of unassigned emissions), and to ensure emission reduction credits conform to the requirements of the CAA and EPA regulations. The authority to issue an ERC permit to sources which are not otherwise required to have an Air Contaminant Discharge Permit or title V operating permit was also established. Finally, the provisions for ''Baseline for Determining Credit for Offsets'' (section 0040) were repealed and replaced by provisions in section 0030.

The provisions for creating emission reduction credits are also used for establishing creditable emission reductions in netting and offset transactions. As such, these rules must conform with the requirements of the CAA and EPA regulations for part D NSR and PSD for creditable emission reductions (including 40 CFR 51.165(a)(1)(vi), 51.165(a)(3), 51.166(b)(3) of EPA's regulations and sections 173(a)(1) and 173(c) of the Act). The rules require that any emission reduction credit be created through permanent reductions in current actual emissions, be enforceable by ODEQ, and be surplus. Emission reductions necessary to comply with any applicable emission limits are not creditable. Note that the requirement for offsets to be Federally enforceable at the time of permit issuance is included in Division 225.

The rules establish the process for banking emission reduction credits and using banked emission reduction credits. The rules also establish the requirements for unused banked credits, returning them to the source as unassigned PSEL and then reducing them through the process set forth in the PSEL rules. These banking provisions comply with EPA's requirements for SIP emission reduction credit banking programs as set forth in the Final Emissions Trading Policy Statement (51 FR 43814, December 4, 1986).

IV. Letter Notice Approval—Repeal of Rule for Parking Offsets in the Portland Central Business District

Pursuant to procedures described in the January 19, 1989, **Federal Register** that describes changes being implemented in the way State implementation plans are processed at EPA, we approved a minor SIP revision submitted by ODEQ on December 15, 1998, in a letter approval dated October 21, 1999. The SIP submittal repealed provisions relating to parking offsets in the Portland Central Business District, specifically, OAR 340–020–0400, 340–020–0405, 340–020–0410, 340–020–0420, and 340–020–0430. Due to the minor nature of this revision, we concluded that conducting notice-and-comment rulemaking prior to approving this revision would have been ''unnecessary and contrary to the public interest'', and therefore, was not required by the Administrative Procedure Act, 5 U.S.C. 553(b). In accordance with EPA guidance on letter approvals, EPA is publishing notice of the letter approval in this action. A copy of the letter approval is in the docket. Approval of this SIP action became final and effective on October 21, 1999, the date of the EPA letter approval.

V. Statutory Authority

Oregon Revised Statutes (ORS) 468 and 468A provide ODEQ the basic legal authority to carry out the provisions of the State Implementation Plan. EPA has reviewed the 2001 edition of the Oregon statutes and believes the Oregon statutes continue to provide ODEQ with adequate legal authority to carry out the Oregon SIP as set forth in sections 110 and 114 of the CAA and its implementing regulations, in particular 40 CFR 51.230. EPA is not incorporating ORS 468 and 468A by reference as part of the Oregon SIP, however, to avoid potential conflict with EPA's independent authorities.

Several provisions of these Oregon statutes merit further discussion. First, during the 2001 Legislative Session, the Oregon Legislature passed House Bill 3536, which amended Oregon's Audit Privilege Act, ORS 468.963, to ensure that the Audit Privilege Law does not apply to criminal investigations or proceedings. This change resolved concerns previously identified by EPA. Second, during the 1997 Legislative Session, the Oregon Legislature enacted a ''Green Permits'' program. The program is designed to use regulatory incentives to achieve better environmental results than otherwise required by law. Although the law states that any requirement under environmental laws that is contrary to the provisions of a Green Permit shall not apply to a facility operating under a Green Permit, this provision does not apply in the case of Federal environmental requirements. EPA, ODEQ and Lane Regional Air Pollution

Authority entered into a memorandum of Agreement dated June 1, 2000, to guide the implementation of Oregon's Green Permits program. The MOA states that implementation of the MOA will be conducted in a manner consistent with ODEQ's responsibilities under its approved, authorized or delegated programs. Therefore, Green Permits cannot be used to change SIP requirements unless the change is submitted as a SIP revision.

Third, ORS 468.126, which remains unchanged since EPA last approved Oregon's SIP, prohibits ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

Fourth, ORS 468A.330, which also is unchanged since EPA last approved the Oregon SIP, sets up a technical assistance program for compliance with air regulations and states that technical assistance visits cannot result in inspections or enforcement actions. EPA has previously determined that this statute did not pose a bar to approval of Oregon's air programs based on EPA's August 12, 1994, guidance document entitled ''Enforcement Response Policy for Treatment of Information Obtained Through the Clean Air Act Section 507 Small Business Assistance Program'' because Oregon operates its air technical assistance program completely separate from its air enforcement program. *See* 60 FR 50106, 50107 (September 28, 1995).

Finally, ORS 468A.075, which is also unchanged since EPA last approved Oregon's SIP, authorizes the Oregon Environmental Quality Commission to grant variances from air contamination rules and standards. Section 110(i) of the CAA specifically precludes States from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. *See* CAA section 110(l); 40 CFR 51.104. Moreover, 40 CFR 51.104(d) specifically states that in order for a variance to be considered for approval as a SIP revision, the State must submit it in accordance with the requirements of 40 CFR 51.104. Therefore, if Oregon grants a source-specific variance to a State air regulation, which regulation has been approved as part of the Oregon SIP, EPA is not precluded from enforcing the Federally-approved SIP limit against the source. The granting of a variance by Oregon to a SIP requirement does not change the Federally-enforceable SIP requirement for that source unless and until the variance has been approved by EPA as a source-specific SIP revision.

VI. Scope of EPA Approval

Oregon has not demonstrated authority to implement and enforce the Oregon Administrative Rules within ''Indian Country'' as defined in 18 U.S.C. 1151.[1] Therefore, this SIP approval does not extend to ''Indian Country'' in Oregon. *See* CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Oregon's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Oregon because the State had not shown it had authority to regulate such sources. *See* 40 CFR 52.1987(c). It is also consistent with EPA's approval of Oregon's title V operating permits program. *See* 59 FR 61820, 61827 (December 2, 1994) (interim approval does not extend to Indian Country); 60 FR 50106, 50106 (September 28, 1995) (full approval does not extend to Indian Country).

VII. Summary of Action

A. EPA Is IBRing the Following New Divisions Into the SIP

200 (General Air Pollution Procedures and Definitions), except sections 0020(58), 0040, 0050, 100, 110, and 120
202 (Ambient Air Quality Standards and PSD Increments), except section 0110
204 (Designation of Air Quality Areas)
206 (Air Pollution Emergencies)
209 (Public Participation)
210 (Stationary Source Notification Requirements)
212 (Stationary Source Testing and Monitoring)
214 (Stationary Source Reporting Requirements), except sections 0300, 0310, 0320, 0330, 0340, 0350, and 0360
216 (Air Contaminant Discharge Permits)
222 (Stationary Source Plant Site Emission Limits), except section 0060
224 (Major New Source Review)
225 (Air Quality Analysis Requirements)
226 (General Emission Standards)
228 (Requirements for Fuel Burning Equipment and Fuel Sulfur Content)
232 (Emission Standards for VOC Point Sources)
234 (Emission Standards for Wood Products Industries), excluding references to TRS—subsections 0010(25), 0010(28)(a), 0010(46), 0210(1), 0240(2), 0250(1), 250(2), 260(3)(a)(A), 260(3)(b)(A), 310(1), 320(2), 340(2), 350(1), and 360(3)(a)(A).
236 (Emission Standards for Specific Industries), excluding references to Fluorides—subsections 0120(1)(a), 0120(3)(a), 0120(3)(e), 0140(1) (the words ''gaseous and particulate fluorides and''), 0140(1)(b), 0140(1)(c) (the sentence ''A schedule for measurement of fluoride levels in forage for new plants and ambient air for new and existing plants shall be submitted.''), 0140(3) (the words ''and Method 13A or 13B and Method 14 or Method 14A for fluorides or other alternative method in 40 CFR 63.849), 0150(1)(d) and 0150(1)(e).
240 (Rules for Areas with Unique Air Quality Needs)
242 (Rules Applicable to the Portland Area)
250 (General Conformity), except section 0110
252 (Transportation Conformity), except subsections 0020(3), 0050(4), 0050(5)(b), 0100(3), 0100(4), 0100(5), 0100(6), 0190(5), 0200(6)(c), 0210(1)(b), 0220(1)(a), 0220(2), and 0250(2).
258 (Motor Vehicle Fuel Specifications)
262 (Residential Woodheating), except section 0050
266 (Field Burning Rules (Willamette Valley))
268 (Emission Reduction Credits)

B: EPA Is Approving, but Not IBRing, the Following New Divisions Into the SIP

12 (Enforcement Procedure and Civil Penalties)
200–0100, 0110, and 0120 (Conflicts of Interest)
262–0050 (Residential Woodheating—Civil Penalties)

C: EPA Is Taking No Action on the Following Divisions

14 (Procedures for Issuance, Denial, Modification, and Revocation of Green Permits)
200–0020(58) (Definition of Immediately)
200–0040 (State of Oregon Clean Air Act Implementation Plan)
200–0050 (Compliance Schedules)
202–0110 (Particle Fallout)

[1] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

208 (Visible Emissions and Nuisance Requirements)
214–0300 through 0360 (Excess Emissions and Emergency Provision)
218 (Oregon Title V Operating Permits)
222–0060 (Plant Site Emission Limits for Sources of Hazardous Air Pollutants)
234 (Emission Standards for Wood Products Industries), references to TRS—subsections 0010(25), 0010(28)(a), 0010(46), 0210(1), 0240(2), 0250(1), 250(2), 260(3)(a)(A), 260(3)(b)(A), 310(1), 320(2), 340(2), 350(1), and 360(3)(a)(A).
236 (Emission Standards for Specific Industries), references to Fluorides and Part 63—subsections 0120(1)(a), 0120(3)(a), 0120(3)(e), 0140(1) (the words ''gaseous and particulate fluorides and''), 0140(1)(b), 0140(1)(c) (the sentence ''A schedule for measurement of fluoride levels in forage for new plants and ambient air for new and existing plants shall be submitted.''), 0140(3) (the words ''and Method 13A or 13B and Method 14 or Method 14A for fluorides or other alternative method in 40 CFR 63.849), 0150(1)(d) and 0150(1)(e).
250–0110 (General Conformity Savings Provision)
252 (Transportation Conformity), subsections 0020(3), 0050(4), 0050(5)(b), 0100(3), 0100(4), 0100(5), 0100(6), 0190(5), 0200(6)(c), 0210(1)(b), 0220(1)(a), 0220(2), and 0250(2).
256 (Motor Vehicles)
264 (Rules for Open Burning)

D: EPA Is Removing the Following Old Divisions From the Current IBR'd SIP Because They Are Replaced by the Rules in Section A Above

12 14 (Procedures for Issuance, Denial, Modification, and Revocation of Permits)
20 (Air Pollution Control)
21 (General Emission Standards for Particulate Matter), except for 21–015 Visible Air Contaminant Limitations), 21–050, 21–055, and 21–060 (Fugitive Emissions), and 21–200, 21–205, 21–210, 21–215, 21–220, 21–225, 21–230, 21–235, 21–240, and 21–245 (Industrial Contingency Requirements for PM–10 Nonattainment Areas)
22 (General Gaseous Emissions)
25 (Specific Industrial Standards Construction and Operation of Wigwam Waste Burners)
26 (Rules for Open Field Burning (Willamette Valley))
27 (Air Pollution Emergencies)
28 (Stationary Source Air Pollution Control and Permitting Procedures), except for 28–1400, 28–1410, 28–1420, 28–1430, 28–1440, and 28–1450 (Excess Emissions and Emergency Provision)
30 (Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area)
31 (Ambient Air Quality Standards)
34 (Residential Wood Heating)

EPA is publishing this rule without prior proposal because the Agency believes this is a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 24, 2003, without further notice unless the Agency receives adverse comments by February 21, 2003.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. There will not be a second comment period; therefore, any party interested in commenting should do so at this time. If no such comments are received, this rule will be effective on March 24, 2003, and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by March 24, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 17, 2002.

L. John Iani,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraphs (c) (138) and (c)(139) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(138) On December 15, 1998, the Director of the Oregon Department of Environmental Quality submitted a SIP revision to repeal the rule for parking offsets in the Portland Central Business District, as state effective September 23, 1998.

(i) Incorporation by reference.

(A) Remove the following provisions from the current incorporation by reference: OAR 340–020–0400, 340–020–0405, 340–020–0410, 340–020–0420, and 340–020–0430. (139) On November 5, 1999, March 7, 2000, June 26, 2001, and November 4, 2002, the Oregon Department of Environmental Quality submitted numerous amendments to the Oregon Administrative Rules as revisions to the Oregon State implementation plan. The revisions included a rule recodification, a marine vapor loading rule, and permitting rules.

(i) Incorporation by reference.

(A) The following sections of Oregon Administrative Rule 340: 200–0030, 202–0200, 204–0010, 204–0020, 204–0050, 204–0060, 204–0070, 204–0080, 206-0010, 206–0020, 206–0030, 206–0040, 206–0050, 206–0060, 206–0070, 210–0010, 210–0020, 212–0010, 212–0110, 214–0100, 214–0120, 222–0030, 224–0020, 226-0200, 228–0010, 228–0020, 228–0100, 228–0110, 228–0120, 228–0130, 228–0200, 228–0210, 232–0010, 232–0020, 232–0040, 232–0050, 232–0060, 232–0070, 232-0080, 232–0085, 232–0090, 232–0100, 232–0120, 232–0130, 232–0140, 232–0150, 232–0160, 232–0170, 232–0180, 232–0190, 232–0200, 232–0210, 232–0220, 232-0230, 232–0240, 234–0010 (except paragraphs (25), (28)(a) & (46)), 234-0100, 234–0110, 234–0120, 234–0130, 234–0140, 234–0200, 234–0210 (except paragraph (1)), 234–0220, 234–0230, 234–0240 (except paragraph (2)), 234-0250 (except pargraphs (1) & (2)), 234–0260 (except paragraphs (3)(a)(A) & (3)(b)(A)), 234–0270, 234–0300, 234–0310 (except paragraph (1)), 234–0320 (except paragraph (2)), 234–0330, 234–0340 (except paragraph (2)), 234–0350 (except paragraph (1)), 234–0360 (except paragraph (3)(a)(A)), 234–0400, 234–0410, 234–0420, 234–0430, 234–0500, 234–0510, 234–0520, 234–0530, 236–0010, 236–0100, 236–0110, 236–0120 (except paragraphs (1)(a), (3)(a), & (3)(e)), 236–0130, 236–0140 (except the words ''gaseous and particulate fluorides and'' in paragraph (1), paragraph (1)(b), the sentence ''A schedule for measurement of fluoride levels in forage for new plants and ambient air for new and existing plants shall be submitted.'' in paragraph (1)(c), the words ''and Method 13A or 13B and Method 14 or Method 14A for fluorides or other alternative method in 40 CFR 63.849'' in paragraph (3)), 236–0150 (except paragraphs (1)(d) and (1)(e)), 236–0200, 236–0210, 236–0220, 236–0230, 236–0400, 236–0410, 236–0420, 236–0430, 236–0440, 240–0010, 240–0100, 240–0300, 242–0010, 242–0020, 242–0030, 242–0040, 242–0050, 242–0060, 242–0070, 242–0080, 242–0090, 242–0100, 242–0110, 242–0120, 242–0130, 242–0140, 242–0150, 242–0160, 242–0170, 242–0180, 242–0190, 242–0200, 242–0210, 242–0220, 242–0230, 242–0240, 242–0250, 242–0260, 242–0270, 242–0280, 242–0290, 242–0300, 242–0310, 242–0320, 242–0330, 242–0340, 242–0350, 242–0360, 242–0370, 242–0380, 242–0390, 242–0400, 242–0410, 242–0420, 242–0430, 242–0440, 242–0500, 242–0510, 242–0520, 242–0600, 242–0610, 242–0620, 242–0630, 242–0700, 242–0710, 242–0720, 242–0730, 242–0740, 242–0750, 242–0760, 242–0770, 242–0780, 242–0790, 250–0010, 250–0020, 250–0030, 250–0040, 250–0050, 250–0060, 250–0070, 250–0080, 250–0090, 250–0100, 252–0010, 252–0020 (except paragraph (3)), 252–0030, 252–0040, 252–0050 (except paragraphs (4) & (5)(b)), 252–0060, 252–0070, 252–0080, 252–0090, 252–0100 (except paragraphs (3) through (6)), 252–0110, 252–0120, 252–0130, 252–0140, 252-0150, 252–0160, 252–0170, 252–0180, 252–0190 (except paragraph (5)), 252-0200 (except paragraph (6)(c)), 252–0210 (except paragraph (1)(b)), 252-0220 (except paragraphs (1)(a) & (2)), 252–0230, 252–0240, 252–0250 (except paragraph (2)), 252–0260, 252–0270, 252–0280, 252–0290, 258–0010, 258–0100, 258–0110, 258–0120, 258–0130, 258–0140, 258–0150, 258–0160, 258–0170, 258–0180, 258–0190, 258–0200, 258–0210, 258–0220, 258–0230, 258–0240, 258–0250, 258–0260, 258–0270, 258–0280, 258–0290, 258–0300, 258–0310, 258–0400, 262-0010, 262–0020, 262–0030, 262–0040, 262–0100, 262–0110, 262–0120, 262–0130, 262–0200, 262–0210, 262–0220, 262–0230, 262–0240, 262–0250, 262–0300, 262–0310, 262–0320, 262–0330, 266–0010, 266–0020, 266–0030, 266–0040, 266–0050, 266–0060, 266–0070, 266–0080, 266–0090, 266–0100, 266–0110, 266–0120, 266–0130, and 268–0020, as effective October 14, 1999; 204–0040, as effective October 25, 2000; 204–0090, as effective March 27, 2001; 232–0030 and 232-0110 as effective June 1, 2001; 200–0010, 200–0020 (except paragraph(58)), 200–0025, 202–0010, 202–0050, 202–0060, 202–0070, 202–0080, 202–0090, 202–0100, 202–0130, 202–0210, 202–0220, 204–0030, 209–0010, 209–0020, 209–0030, 209–0040, 209–0050, 209–0060, 209–0070, 209–0080, 210–0100, 210–0110, 210-0120, 210–0205, 210–0215, 210–0225, 210–0230, 210–0240, 210–0250, 212–0120, 212–0130, 212–0140, 212–0150, 212–0200, 212–0210, 212–0220, 212–0230, 212-0240, 212–0250, 212–0260, 212–0270, 212–0280, 214–0010, 214–0110, 214–0114, 214–0130, 214–0200, 214–0210, 214–0220, 216–0010, 216–0020, 216–0025, 216–0030, 216–0040, 216–0052, 216–0054, 216–0056, 216–0060, 216–0064, 216–0066, 216–0070, 216–0082, 216–0084, 216–0090, 216–0094, 222–0010, 222–0020, 222–0040, 222–0042, 222–0043, 222–0045, 222–0070, 222–0080, 222–0090, 224–0010, 224–0030, 224–0040, 224–0050, 224–0080, 224–0100, 225–0010, 225–0020(10), 225–0030, 225–0040, 225–0070, 225–0090(1)(c), 226–0010, 226–0100, 226–0110, 226–0120, 226–0130, 226–0140, 226–0210, 226–0300, 226–0310, 226–0320, 226–0400, 240–0020, 240–0030, 240–0110, 240–0120,

240–0130, 240–0140, 240–0150, 240–0160, 240–0170, 240–0180, 240–0190, 240–0200, 240–0210, 240–0220, 240–0230, 240–0240, 240–0250, 240–0270, 240–0310, 240–0320, 240–0330, 240–0340, 240–0350, 240–0360, 240–0400, 240–0410, 240–0420, 240–0430, 240–0440, 268–0010, and 268–0030, as effective July 1, 2001; 222–0041, 224–0060, 224–0070, 225–0020 (except paragraph (10)), 225–0045, 225–0050, 225–0060, and 225–0090 (except paragraph (1)(c)), as effective October 8, 2002; 225–0020(10) and 225–0090(1)(c), as effective October 8, 2002, through April 6, 2003.

(B) Remove the following old divisions of Oregon Administrative Rule 340 from the current incorporation by reference: 12, 14, 20, 21 (except for sections 21–015, 21–050, 21–055, 21–060, 21–200, 21–205, 21–210, 21–215, 21–220, 21–225, 21–230, 21–235, 21–240, and 21–245), 22, 25, 26, 27, 28 (except for 28–1400, 28–1410, 28–1420, 28–1430, 28–1440, and 28–1450), 30, 31, and 34.

(ii) Additional Material:

(A) The following sections of Oregon Administrative Rule 340: Division 12, 200–0100, 200–0110, 200–0120, as effective July 1, 2001; and 262–0050, as effective October 14, 1999.

3. Section 52.1977 is amended by revising section 3.1 to read as follows:

§ 52.1977 Content of approved State submitted implementation plan.

* * * * *

3.1 Oregon Administrative Rules—Chapter 340 Incorporation by Reference (March 24, 2003)

Division 21—General Emission Standards for Particulate Matter

21–015 Visible Air Contaminant Limitations (1/29/96)

Fugitive Emissions

21–050 Definitions (1/29/96)
21–055 Applicability (3/10/93)
21–060 Requirements (3/10/93)

Industrial Contingency Requirements for PM–10 Nonattainment Areas

21–200 Purpose (5/1/95)
21–205 Relation to other Rules (3/10/93)
21–210 Applicability (3/10/93)
21–215 Definitions (3/10/93)
21–220 Compliance Schedule for Existing Sources (3/10/93)
21–225 Wood-Waste Boilers (3/10/93)
21–230 Wood Particulate Dryers at Particleboard Plants (3/10/93)
21–235 Hardboard Manufacturing Plants (1/29/96)
21–240 Air Conveying Systems (3/10/93)
21–245 Fugitive Emissions (3/10/93)

Division 23—Rules for Open Burning

23–022 How to Use these Open Burning Rules (3/10/93)
23–025 Policy (3/10/93)
23–030 Definitions (6/16/84, except for paragraph (15) is 3/10/93)
23–035 Exemptions, Statewide (3/10/93)
23–040 General Requirements Statewide (3/10/93)
23–042 General Prohibitions Statewide (3/10/93)
23–043 Open Burning Schedule (3/10/93)
23–045 County Listing of Specific Open Burning Rules (3/10/93)

Open Burning Prohibitions

23–055 Baker, Clatsop, Crook, Curry, Deshutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties (3/10/93)
23–060 Benton, Linn, Marion, Polk, and Yamhill Counties (3/10/93)
23–065 Clackamas County (3/10/93)
23–070 Multnomah County (3/10/93)
23–075 Washington County (3/10/93)
23–080 Columbia County (3/10/93)
23–085 Lane County (3/10/93)
23–090 Coos, Douglas, Jackson and Josephine Counties (3/10/93)
23–100 Letter Permits (3/10/93)
23–105 Forced Air Pit Incinerators (3/10/93)
23–110 Records and Reports (3/10/93)
23–115 Open Burning Control Areas (3/10/93)

Division 24—Motor Vehicles

Pertaining to Motor Vehicles Inspection

24–100 County Designations (11/26/96)

Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards

24–300 Scope (11/26/96)
24–301 Boundary Designations (3/10/93)
24–305 Definitions (11/26/96)
24–306 Government-Owned Vehicle, Permanent Fleet Vehicle and U.S. Government Vehicle Testing Requirements (11/26/96)
24–307 Motor Vehicle Inspection Program Fee Schedule (11/26/96)
24–308 Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program (11/26/96)
24–309 Light Duty Motor Vehicle and Heavy Duty Gasoline Motor Vehicle Emission Control Test Method for Basic Program (11/26/96)
24–312 Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program (11/26/96)
24–314 Motorcycle Noise Emission Control Test Method, except all language in (4)(a) referring to a ''sixth hill extrapolation'' (11/26/96)
24–318 Renew Registration for Light Duty Motor Vehicles and Heavy Duty Gasoline Motor Vehicles Temporarily Operating Outside of Oregon (11/26/96)
24–320 Light Duty Motor Vehicle Emission Control Test Criteria for Basic Program (11/26/96)
24–325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (11/26/96)
24–330 Light Duty Motor Vehicle Emission Control Standards for Basic Program (11/26/96)
24–332 Light Duty Motor Vehicle Emission Control Standards for Enhanced Program (11/26/96)
24–335 Heavy-Duty Gasoline Motor Vehicle Emission Control Emission Standards (11/26/96)
24–337 Motor Vehicle Propulsion Noise Standards (11/26/96)
24–340 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates (11/26/96)
24–355 Gas Analytical System Licensing Criteria for Basic Program (11/26/96)
24–357 Gas Analytical System Testing for Enhanced Program (11/26/96)
24–360 Agreement with Independent Contractor; Qualifications of Contractor; Agreement Provisions (11/26/96)

Division 28—Stationary Source Air Pollution Control and Permitting Procedures

Excess Emissions and Emergency Provision

28–1400 Purpose and Applicability (9/24/93)
28–1410 Planned Startup and Shutdown (9/24/96)
28–1420 Scheduled Maintenance (11/4/93)
28–1430 Upsets and Breakdowns (9/24/96)
28–1440 Reporting Requirements (11/4/93)
28–1450 Enforcement Action Criteria (9/24/93)

Division 200—General Air Pollution Procedures and Definitions

200–0010 Purpose and Application (7/1/01)
200–0020 General Air Quality Definitions, except (58) (7/1/01)

200–0025 Abbreviations and Acronyms (7/1/01)
200–0030 Exceptions (10/14/99)

Division 202—Ambient Air Quality Standards and PSD Increments

202–0010 Definitions (7/1/01)

Ambient Air Quality Standards

202–0050 Purpose and Scope of Ambient Air Quality Standards (7/1/01)
202–0060 Suspended Particulate Matter (7/1/01)
202–0070 Sulfur Dioxide (7/1/01)
202–0080 Carbon Monoxide (7/1/01)
202–0090 Ozone (7/1/01)
202–0100 Nitrogen Dioxide (7/1/01)
202–0130 Ambient Air Quality Standard for Lead (7/1/01)

Prevention of Significant Deterioration Increments

202–0200 General (10/14/99)
202–0210 Ambient Air Increments (7/1/01)
202–0220 Ambient Air Ceilings (7/1/01)

Division 204—Designation of Air Quality Areas

204–0010 Definitions (10/14/99)
204–0020 Designation of Air Quality Control Regions (10/14/99)
204–0030 Designation of Nonattainment Areas (7/1/01)
204–0040 Designation of Maintenance Areas (10/25/00)
204–0050 Designation of Prevention of Significant Deterioration Areas (10/14/99)
204–0060 Redesignation of Prevention of Significant Deterioration Areas (10/14/99)
204–0070 Special Control Areas (10/14/99)
204–0080 Motor Vehicle Inspection Boundary Designations (10/14/99)
204–0090 Oxygenated Gasoline Control Areas (3/27/01)

Division 206—Air Pollution Emergencies

206–0010 Introduction (10/14/99)
206–0020 Definitions (10/14/99)
206–0030 Episode Stage Criteria for Air Pollution Emergencies (10/14/99)
206–0040 Special Conditions (10/14/99)
206–0050 Source Emission Reduction Plans (10/14/99)
206–0060 Regional Air Pollution Authorities (10/14/99)
206–0070 Operations Manual (10/14/99)

Division 209—Public Participation

209–0010 Purpose (7/1/01)
209–0020 Applicability (7/1/01)
209–0030 Public Notice Categories and Timing (7/1/01)
209–0040 Public Notice Information (7/1/01)
209–0050 Public Notice Procedures (7/1/01)
209–0060 Persons Required to Be Notified (7/1/01)
209–0070 Hearing and Meeting Procedures (7/1/01)
209–0080 Issuance or Denial of a Permit (7/1/01)

Division 210—Stationary Source Notification Requirements

210–0010 Applicability (10/14/99)
210–0020 Definitions (10/14/99)

Registration

210–0100 Registration in General (7/1/01)
210–0110 Registration Requirements (7/1/01)
210–0120 Re-Registration (7/1/01)

Notice of Construction and Approval of Plans

210–0205 Applicability (7/1/01)
210–0215 Requirement (7/1/01)
210–0225 Types of Construction/Modification Changes (7/1/01)
210–0230 Notice to Construct (7/1/01)
210–0240 Construction Approval (7/1/01)
210–0250 Approval to Operate (7/1/01)

Division 212—Stationary Source Testing and Monitoring

212–0010 Definitions (10/14/99)

Sampling, Testing and Measurement

212–0110 Applicability (10/14/99)
212–0120 Program (7/1/01)
212–0130 Stack Heights and Dispersion Techniques (7/1/01)
212–0140 Methods (7/1/01)
212–0150 Department Testing (7/1/01)

Compliance Assurance Monitoring

212–0200 Purpose and Applicability (7/1/01)
212–0210 Monitoring Design Criteria (7/1/01)
212–0220 Submittal Requirements (7/1/01)
212–0230 Deadlines for Submittals (7/1/01)
212–0240 Approval of Monitoring Plans (7/1/01)
212–0250 Operation of Approved Monitoring (7/1/01)
212–0260 Quality Improvement Plan (QIP) Requirements (7/1/01)
212–0270 Reporting and Recordkeeping Requirements (7/1/01)
212–0280 Savings Provisions (7/1/01)

Division 214—Stationary Source Reporting Requirements

214–0010 Definitions (7/1/01)

Reporting

214–0100 Applicability (10/14/99)
214–0110 Request for Information (7/1/01)
214–0114 Records; Maintaining and Reporting (7/1/01)
214–0120 Enforcement (10/14/99)
214–0130 Information Exempt from Disclosure (7/1/01)

Emission Statements for VOC and NO_X Sources

214–0200 Purpose and Applicability (7/1/01)
214–0210 Requirements (7/1/01)
214–0220 Submission of Emission Statement (7/1/01)

Division 216—Air Contaminant Discharge Permits

216–0010 Purpose (7/1/01)
216–0020 Applicability (7/1/01)
216–0025 Types of Permits (7/1/01)
216–0030 Definitions (7/1/01)
216–0040 Application Requirements (7/1/01)
216–0052 Construction ACDP (7/1/01)
216–0054 Short Term Activity ACDPs (7/1/01)
216–0056 Basic ACDPs (7/1/01)
216–0060 General Air Contaminant Discharge Permits (7/1/01)
216–0064 Simple ACDP (7/1/01)
216–0066 Standard ACDPs (7/1/01)
216–0070 Permitting Multiple Sources at a Single Adjacent or Contiguous Site (7/1/01)
216–0082 Termination or Revocation of an ACDP (7/1/01)
216–0084 Department Initiated Modification (7/1/01)
216–0090 Sources Subject to ACDPs and Fees (7/1/01)
216–0094 Temporary Closure (7/1/01)

Division 222—Stationary Source Plant Site Emission Limits

222–0010 Policy (7/1/01)
222–0020 Applicability (7/1/01)
222–0030 Definitions (10/14/99)

Criteria for Establishing Plant Site Emission Limits

222–0040 Generic Annual PSEL (7/1/01)
222–0041 Source Specific Annual PSEL (10/8/02)
222–0042 Short Term PSEL (7/1/01)
222–0043 General Requirements for All PSEL (7/1/01)
222–0045 Unassigned Emissions (7/1/01)
222–0070 Plant Site Emission Limits for Insignificant Activities (7/1/01)
222–0080 Plant Site Emission Limit Compliance (7/1/01)
222–0090 Combining and Splitting Sources (7/1/01)

Division 224—Major New Source Review

224–0010 Applicability and General Prohibitions (7/1/01)
224–0020 Definitions (10/14/99)
224–0030 Procedural Requirements (7/1/01)
224–0040 Review of New Sources and Modifications for Compliance with Regulations (7/1/01)
224–0050 Requirements for Sources in Nonattainment Areas (7/1/01)
224–0060 Requirements for Sources in Maintenance Areas (10/8/02)
224–0070 Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas (10/8/02)
224–0080 Exemptions (7/1/01)
224–0100 Fugitive and Secondary Emissions (7/1/01)

Division 225—Air Quality Analysis Requirements

225–0010 Purpose (7/1/01)
225–0020 Definitions (10/8/02 and 10/8/02 thru 4/6/03)
225–0030 Procedural Requirements (7/1/01)
225–0040 Air Quality Models (7/1/01)
225–0045 Requirements for Analysis in Maintenance Areas (10/8/02)
225–0050 Requirements for Analysis in PSD Class II and Class III Areas (10/8/02)
225–0060 Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas (10/8/02)
225–0070 Requirements for Demonstrating Compliance with AQRV Protection (7/1/01)
225–0090 Requirements for Demonstrating a Net Air Quality Benefit (10/8/02 and 10/8/02 thru 4/6/03)

Division 226—General Emission Standards

226–0010 Definitions (7/1/01)

Highest and Best Practicable Treatment and Control

226–0100 Policy and Application (7/1/01)
226–0110 Pollution Prevention (7/1/01)
226–0120 Operating and Maintenance Requirements (7/1/01)
226–0130 Typically Achievable Control Technology (7/1/01)
226–0140 Additional Control Requirements for Stationary Sources of Air Contaminants (7/1/01)

Grain Loading Standards

226–0200 Applicability (10/14/99)
226–0210 Particulate Emission Limitations for Sources Other Than Fuel Burning and Refuse Burning Equipment (7/1/01)

Particulate Emissions From Process Equipment

226–0300 Applicability (7/1/01)
226–0310 Emission Standard (7/1/01)
226–0320 Determination of Process Weight (7/1/01)

Alternative Emission Controls

226–0400 Alternative Emission Controls (Bubble) (7/1/01)

Division 228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content

228–0010 Applicability (10/14/99)
228–0020 Definitions (10/14/99)

Sulfur Content of Fuels

228–0100 Residual Fuel Oils (10/14/99)
228–0110 Distillate Fuel Oils (10/14/99)
228–0120 Coal (10/14/99)
228–0130 Exemptions (10/14/99)

General Emission Standards for Fuel Burning Equipment

228–0200 Sulfur Dioxide Standards (10/14/99)
228–0210 Grain Loading Standards (10/14/99)

Division 232—Emission Standards for VOC Point Sources

232–0010 Introduction (10/14/99)
232–0020 Applicability (10/14/99)
232–0030 Definitions (6/1/01)
232–0040 General Non-categorical Requirements (10/14/99)
232–0050 Exemptions (10/14/99)
232–0060 Compliance Determination (10/14/99)
232–0070 Gasoline Dispensing Facilities (10/14/99)
232–0080 Bulk Gasoline Plants (10/14/99)
232–0085 Gasoline Delivery Vessel(s) (10/14/99)
232–0090 Bulk Gasoline Terminals (10/14/99)
232–0100 Testing Vapor Transfer and Collection Systems (10/14/99)
232–0110 Loading Gasoline onto Marine Tank Vessels (6/1/01)
232–0120 Cutback and Emulsified Asphalt (10/14/99)
232–0130 Petroleum Refineries (10/14/99)
232–0140 Petroleum Refinery Leaks (10/14/99)
232–0150 Liquid Storage (10/14/99)
232–0160 Surface Coating in Manufacturing (10/14/99)
232–0170 Aerospace Component Coating Operations (10/14/99)
232–0180 Degreasers (10/14/99)
232–0190 Open Top Vapor Degreasers (10/14/99)
232–0200 Conveyorized Degreasers (10/14/99)
232–0210 Asphaltic and Coal Tar Pitch Used for Roofing Coating (10/14/99)
232–0220 Flat Wood Coating (10/14/99)
232–0230 Rotogravure and Flexographic Printing (10/14/99)
232–0240 Perchloroethylene Dry Cleaning (10/14/99)

Division 234—Emission Standards for Wood Products Industries

234–0010 Definitions, excluding (25), (28)(a) & (46) (10/14/99)

Wigwam Waste Burners

234–0100 Statement of Policy and Applicability (10/14/99)
234–0110 Authorization to Operate a Wigwam Burner (10/14/99)
234–0120 Emission and Operation Standards for Wigwam Waste Burners (10/14/99)
234–0130 Monitoring and Reporting (10/14/99)
234–0140 Existing Administrative Agency Orders (10/14/99)

Kraft Pulp Mills

234–0200 Statement of Policy and Applicability (10/14/99)
234–0210 Emission Limitations, excluding (1) (10/14/99)
234–0220 More Restrictive Emission Limits (10/14/99)
234–0230 Plans and Specifications (10/14/99)
234–0240 Monitoring, excluding (2) (10/14/99)
234–0250 Reporting, excluding (1) & (2) (10/14/99)
234–0260 Upset Conditions, excluding (3)(a)(A) & (3)(b)(A) (10/14/99)
234–0270 Chronic Upset Conditions (10/14/99)

Neutral Sulfite Semi-Chemical (NSSC) Pulp Mills

234–0300 Applicability (10/14/99)
234–0310 Emission Limitations, excluding (1) (10/14/99)
234–0320 More Restrictive Emission Limits, excluding (2) (10/14/99)
234–0330 Plans and Specifications (10/14/99)
234–0340 Monitoring, excluding (2) (10/14/99)
234–0350 Reporting, excluding (1) (10/14/99)
234–0360 Upset Conditions, excluding (3)(a)(A) (10/14/99)

Sulfite Pulp Mills

234–0400 Statement of Policy and Applicability (10/14/99)

234–0410 Minimum Emission Standards (10/14/99)
234–0420 Monitoring and Reporting (10/14/99)
234–0430 Exceptions (10/14/99)

Board Products Industries (Veneer, Plywood, Particleboard, Hardboard)

234–0500 Applicability and General Provisions (10/14/99)
234–0510 Veneer and Plywood Manufacturing Operations (10/14/99)
234–0520 Particleboard Manufacturing Operations (10/14/99)
234–0530 Hardboard Manufacturing Operations (10/14/99)

Division 236—Emission Standards for Specific Industries

236–0010 Definitions (10/14/99)

Primary Aluminum Standards

236–0100 Statement of Purpose (10/14/99)
236–0110 Applicability (10/14/99)
236–0120 Emission Standards, excluding (1)(a), (3)(a), & (3)(e) (10/14/99)
236–0130 Special Problem Areas (10/14/99)
236–0140 Monitoring, excluding references to fluorides (10/14/99)
236–0150 Reporting, excluding (1)(d) and (1)(e) (10/14/99)

Laterite Ore Production of Ferronickel

236–0200 Statement of Purpose (10/14/99)
236–0210 Applicability (10/14/99)
236–0220 Emission Standards (10/14/99)
236–0230 Monitoring and Reporting (10/14/99)

Hot Mix Asphalt Plants

236–0400 Applicability (10/14/99)
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* * * * *

4. Paragraph (a)(1)(ii) of § 52.1982 is revised to read as follows:

§ 52.1982 Control Strategy: Ozone.

(a) * * * (1) * * *

(ii) The phrase ''in most cases'' in rule OAR 340–232–0060(1) applies to approximately 1,200 gasoline service stations where compliance is determined by observing whether specific emission control equipment, selected from a specific list on file at DEQ, is in place and operating properly.

§ 52.1985 [Reserved]

5. Remove and reserve § 52.1985.

6. Paragraphs (a) and (c) of § 52.1987 are revised to read as follows:

§ 52.1987 Significant deterioration of air quality.

(a) The Oregon Department of Environmental Quality rules for the prevention of significant deterioration of air quality (provisions of OAR chapter 340, Divisions 200, 202, 209, 212, 216, 222, 224, 225, and 268), as in effect on October 8, 2002, are approved as meeting the requirements of title I, part C, subpart 1 of the Clean Air Act, as in effect on July 1, 2002, for preventing significant deterioration of air quality.

* * * * *

(c) The requirements of title I, part C, subpart 1 of the Clean Air Act are not met for Indian country in Oregon because Oregon has not demonstrated authority to implement and enforce under the Clean Air Act Oregon State rules in Indian country. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated and made part of the applicable plan for Indian country in the State of Oregon.

7. Paragraph (a) of § 52.1988 is revised to read as follows:

§ 52.1988 Air contaminant discharge permits.

(a) Except for compliance schedules under OAR 340–200–0050, emission limitations and other provisions contained in Air Contaminant Discharge Permits issued by the State in accordance with the provisions of the Federally-approved rules for Air Contaminant Discharge Permits (OAR chapter 340, Division 216), Plant Site Emission Limit (OAR chapter 340, Division 222), Alternative Emission Controls (OAR 340–226–0040) and Public Participation (OAR chapter 340, Division 209), shall be applicable requirements of the Federally-approved Oregon SIP (in addition to any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP. Plant site emission limits and alternative emission limits (bubbles) established in Federal Operating Permits issued by the State in accordance with the Federally-approved rules for Plant Site Emission Limit (OAR chapter 340, Division 222) and Alternative Emission Controls (OAR 340–226–0040), shall be applicable requirements of the Federally-approved Oregon SIP (in addition to any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118–1a; FRL–7428–5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the remaining portions of the Ohio Environmental Protection Agency's (OEPA) SIP for Prevention of Significant Deterioration (PSD) provisions for attainment areas. EPA had previously

conditionally approved Ohio's prior SIP submission on October 10, 2001. Today's final approval is of OEPA's rule revisions submitted in response to EPA's July 18, 2002, conditional approval. In its July 2002 submittal, Ohio also made additional revisions to the OAC that were not addressed in EPA's October 10, 2001 conditional approval.

Recently, EPA announced new regulations regarding changes to the preconstruction permit program under EPA's efforts regarding ''New Source Review Reform.'' Today's approval of Ohio's SIP submission does not address EPA's new rules but is limited to portions of Ohio's preconstruction permit program under the existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any requirements that EPA may promulgate as part of New Source Review Reform.

DATES: This rule is effective on March 10, 2003, unless EPA receives comments by February 21, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Genevieve Damico at (312) 353–4761 before visiting the Region 5 office.

Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

A. What Is the Purpose of This Document?
B. Who Is Affected by This Action?
C. What Is the History of Ohio's PSD Program?
D. How Are OEPA's PSD Rules Structured?
E. Why Are We Granting Approval?
F. How Is This Action Related to EPA's Current Review of Ohio's programs?
G. How Is This Action Related to EPA's New Preconstruction Permit Program?
H. How Does This Rulemaking Affect EPA's Preconstruction Permit Program?

A. What Is the Purpose of This Document?

We are approving the remaining portions of Ohio's SIP for PSD provisions for attainment areas which was conditionally approved by EPA on October 10, 2001 (66 FR 51570).

B. Who Is Affected by This Action?

The PSD program applies to facilities constructing major sources of air pollution. Since the PSD program that we are approving today is similar to the conditionally approved PSD program that OEPA currently operates, these facilities will generally not be affected by EPA's approval of these changes to Ohio's PSD SIP.

C. What Is the History of Ohio's PSD Program?

OEPA submitted its first permitting SIP to EPA on January 31, 1972, and submitted replacement regulations on June 6, 1973. These regulations provided requirements, such as best available technology, that were meant to be uniformly applied throughout the State.

The Clean Air Act Amendments of 1977 (Amendments) required states to go further than uniformly applied regulations. The Amendments provided for the designation of areas within a state as ''attainment'' or ''nonattainment.'' An ''attainment'' area meets the national ambient air quality standards (NAAQS). A ''nonattainment'' area does not meet the NAAQS.

OEPA requested delegation of the federal PSD attainment preconstruction permitting program on February 8, 1980, and received delegation on January 29, 1981.

OEPA submitted a request for approval of Ohio Administrative code (OAC) sections 3745–31–01 to 3745–31–20 into the SIP on March 1, 1996 as its construction permit program. Ohio subsequently submitted revisions dated March 1, 1996, April 16, 1997, September 5, 1997, December 4, 1997, and April 21, 1998. OEPA's PSD program was conditionally approved on October 10, 2001 (66 FR 51570). On July 18, 2002, OEPA submitted revisions to OAC 3754–31. Today we are acting on those revisions by approving them.

D. How Are OEPA's PSD Rules Structured?

Part C of Title I of the Clean Air Act (CAA) requires a SIP for PSD rules for attainment areas. 40 CFR 51.165 and 51.166 contain the requirements for a PSD permitting program. OEPA submitted this SIP in the form of OAC sections 3745–31–11 to 3745–31–20. OEPA also submitted general provisions applying to both attainment and nonattainment areas in the form of OAC sections 3745–31–01 to 3745–31–10.

E. Why Are We Granting Approval?

The October 10, 2001, conditional approval required OAC section 3745–31–01(OOO) to include a 25 tons per year significance level for particulate matter, and a 50 ton per year significance level for municipal solid waste landfill emissions, as required by 40 CFR 51.166(b)(23)(i). Furthermore, total reduced sulfur and reduced sulfur compounds must be defined to include hydrogen sulfide. The OAC now reflects these requirements.

Ohio also made additional revisions to OAC 3745–31–01, –02, –03, –05, and –07 that were not reflected in the October 10, 2001 conditional approval. The July 18, 2002 SIP submittal from Ohio incorporated definitions for municipal solid waste landfill, non-methane organic compound, non-road engine, reduced sulfur compound, soil-liquid extraction remediation activities, soil-vapor extraction remediation activities and total reduced sulfur in OAC 3745–31–01. We find the additional definitions to be acceptable in the context of Ohio's permit to install program.

Ohio added regulatory language in OAC 3745–31–02(A)(1) that requires the transferee of any permit to install to assume the responsibilities of the original permit. The permittee must also notify OEPA of the transfer. EPA finds these changes to the rule acceptable.

The SIP submittal adds permanent exemptions in OAC 3745–31–03 for non-road engines, crushing and screening plants that are exempt from 40 CFR part 60, subpart OOO, soil-vapor and soil-liquid extraction remediation activities. The exemption for a permit to install for non-road engines that has been added to the rule builds upon the exemption from the previously approved definition of stationary source in 3745–31–01. This exemption is consistent with section 216 of the Clean Air Act. The rule further clarifies that these units are not exempt from the permit to install program if the opacity is greater than twenty percent. The exemption for a permit to install that has been added for crushing and screening plants is consistent with the 40 CFR part 60, subpart OOO exemptions. The exemption for a permit to install for soil-vapor and soil-liquid remediation activities is limited to

activities that have total combined emission rates less than 15 pounds of organic compounds per day and last no longer than 18 months. EPA finds that the sources exempted by this rule will not have a significant impact on air quality. EPA therefore finds this rule acceptable.

OAC 3745–31–07 has been amended to allow the Director of OEPA to revoke a permit to install if the permittee requests revocation for cause and the Director determines that the revocation will not result in the violation of any applicable laws. EPA finds this rule acceptable.

The rule also makes non-substantive administrative changes to 3745–31–01, 3745–31–03(A)(1)(p) and (ee), 3745–31–03(A)(4) and (4)(a), 3745–31–05(A)(2)(d) and (A)(3), and 3745–31–05(E)(3). EPA finds these changes to the rule acceptable.

F. How Is This Action Related to EPA's Current Review of Ohio's Programs?

EPA is currently reviewing OEPA's implementation of the delegated PSD program in response to a petition submitted by D. David Altman on behalf of Ohio Citizen Action, the Ohio Environmental Council, Rivers Unlimited, and the Ohio Sierra Club. Any concerns that EPA finds as a result of this review will be addressed through the process of responding to the petition. Today's approval only addresses whether or not specific provisions of Ohio's Administrative Code meet the Federal criteria for a PSD program, as set forth in 40 CFR part 51, and does not address any issues regarding how the code is being applied or enforced by Ohio. We believe the OAC revisions meet the criteria for approval. No particular findings or conclusions in or from the EPA petition review should be inferred from today's approval.

G. How Is This Action Related to EPA's New Preconstruction Permit Program?

Recently, EPA announced new regulations regarding changes to the preconstruction permit program under EPA's efforts regarding ''New Source Review Reform.'' *See http://www.epa.gov/nsr/*. Today's approval of Ohio's SIP submission does not address EPA's new rules but is limited to portions of Ohio's preconstruction permit program under the existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any requirements that EPA may promulgate as part of New Source Review Reform.

H. How Does This Rulemaking Affect EPA's Preconstruction Permit Program?

In addition, while EPA is approving Ohio's PSD SIP, EPA recognizes that it has a responsibility to insure that all States properly implement their preconstruction permitting programs. EPA's approval of Ohio's PSD program does not divest the Agency of the duty to continue appropriate oversight to insure that PSD determinations made by Ohio are consistent with the requirements of the CAA, EPA regulations, and the SIP.

EPA's authority to oversee PSD program implementation is set forth in sections 113, 167, and 505(b) of the Act. For example, section 167 provides that EPA shall issue administrative orders, initiate civil actions, or take whatever other enforcement action may be necessary to prevent construction of a major stationary source that does not ''conform to the requirements of'' the PSD program. Similarly, section 113(a)(5) provides for administrative orders and civil actions whenever EPA finds that a State ''is not acting in compliance with'' any requirement or prohibition of the Act regarding construction of new or modified sources. Likewise, section 113(a)(1) provides for a range of enforcement remedies whenever EPA finds that a person is in violation of an applicable implementation plan.

Enactment of Title V of the CAA and the EPA objection opportunity provided therein has added new tools for addressing deficient new source review decisions by states. Section 505(b) requires EPA to object to the issuance of a permit issued pursuant to Title V whenever the Administrator finds during the applicable review period, either on her own initiative or in response to a citizen petition, that the permit is ''not in compliance with the requirements of an applicable requirement of this Act, including the requirements of an applicable implementation plan.''

Regardless of whether EPA addresses deficient permits using objection authorities or enforcement authorities or both, EPA cannot intervene unless the state decision fails to comply with applicable requirements. Thus, EPA may not intrude upon the significant discretion granted to states under new source review programs, and will not ''second guess'' state decisions. Rather, in determining whether a Title V permit incorporating PSD provisions calls for EPA objection under section 505(b) or use of enforcement authorities under sections 113 and 167, EPA will consider whether the applicable substantive and procedural requirements for public review and development of supporting documentation were followed. In particular, EPA will review the process followed by the permitting authority in determining best available control technology, assessing air quality impacts, meeting Class I area requirements, and other PSD requirements, to ensure that the required SIP procedures (including public participation and Federal Land Manager consultation opportunities) were met. EPA will also review whether any determination by the permitting authority was made on reasonable grounds properly supported on the record, described in enforceable terms, and consistent with all applicable requirements. Finally, EPA will review whether the terms of the PSD permit were properly incorporated into the operating permit.

EPA Action

In this rulemaking action, we are approving the sections addressed above as a revision to the Ohio SIP for PSD. The sections discussed in this notice were conditionally approved on October 10, 2001, and EPA is approving them based on the State's July 18, 2002 submittal.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the State Plan should adverse written comments be filed. This rule will be effective without further notice unless the Agency receives relevant adverse written comment by February 21, 2003. Should the Agency receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 10, 2003.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state regulation as meeting federal requirements and imposes no additional requirements beyond those imposed by the State. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial

number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) 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 provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 13, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

2. Section 52.1870 is amended by adding paragraph (c)(127) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(127) On July 18, 2002, Ohio submitted revisions to its Permit to Install rules as a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rules 3745–31–01, 3745–31–02, 3745–31–03, 3745–31–05, and 3745–31–07 effective November 30, 2001.

[FR Doc. 03–1235 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 106–0064; FRL–7418–8]

Approval and Promulgation of Implementation Plans; Arizona; Motor Vehicle Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving two State Implementation Plan (SIP) revisions submitted by the Arizona Department of Environmental Quality (ADEQ). These revisions consist of several changes that have been made to Arizona's Basic and Enhanced Vehicle Emissions Inspection and Maintenance Programs after the programs were approved by EPA in 1995. Arizona's Basic Vehicle Emissions Inspection (VEI) Program is implemented in the Tucson Air Planning Area carbon monoxide (CO) nonattainment area (Area B). The Enhanced VEI Program is implemented in the Maricopa County ozone and CO nonattainment area (the Phoenix area or Area A).

EFFECTIVE DATE: February 21, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA's Region 9 office at 75 Hawthorne Street, San Francisco, California 94105.

This document and the Technical Support Document (TSD) for this rulemaking are also available as electronic files on EPA's Region 9 Web page at *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: Sylvia Dugré, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Phone: (415) 947–4149; e-mail: dugre.sylvia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 12, 2002 (67 FR 52433), EPA published a notice of proposed rulemaking for the State of Arizona. The notice proposed approval of revisions to the SIP for Arizona's Basic and Enhanced VEI programs.

ADEQ submitted the changes to its Basic and Enhanced VEI Programs as a revision to its SIP on July 6, 2001. The July 6, 2001 SIP revision package includes, among various other program changes, ADEQ's revised rule which extends the exemption for newer model year vehicles from the current model year to the first five model year vehicles and the revised rules incorporating legislative changes to the provisions for issuing a waiver. Also included in the SIP revision is State legislation that discontinues the remote sensing program that had been implemented in Area A and authorizes a study to determine the most effective on-road testing program for Arizona.

A SIP revision supplementing the July 6, 2001 SIP revision was submitted by ADEQ on April 10, 2002. This submittal contains the ADEQ rule revisions incorporating on-board diagnostics (OBD) testing and, in accordance with the State legislation, deleting the previously approved remote sensing program from the ADEQ regulations. It also contains a modeling demonstration, with adjustments for the IM147

transient loaded-mode emissions test, showing the I/M program implemented in Area A meets EPA's high enhanced performance standard.

A more complete description of Arizona's submittals and the rationale for EPA's approval were presented in the proposal and will not be restated here.

II. Public Comments on the Proposed Action

No comments were submitted to the docket during the comment period for the proposed rulemaking published in the August 12, 2002 **Federal Register**.

III. Final Action

Clean Air Act (CAA) sections 182(c)(3) and 187(a)(6) require serious ozone and carbon monoxide areas, such as the Phoenix area, to implement enhanced I/M programs. EPA's requirements for these I/M programs are contained in 40 CFR part 51, subpart S. In order for EPA to approve the SIP revisions submitted by ADEQ, they must be consistent with EPA's I/M requirements and they must meet CAA section 110(a) requirements for enforceability as well as CAA section 110(1) requirements regarding plan revisions.

In today's action, EPA is finding that the Arizona enhanced I/M program implemented in Area A (Phoenix) meets CAA and EPA requirements for a high enhanced program. We are also finding that the VEI program implemented in Area B (Tucson) continues to meet EPA's I/M requirements for basic programs.[1] The basis for these findings are discussed in the proposal for today's action. *See* 67 FR 52433.

In addition, under CAA section 110(1), EPA is finding that these SIP revisions submitted by ADEQ do not interfere with the applicable requirements concerning CO maintenance in the Tucson area or any other requirements of the CAA applicable to Tucson. We are also finding that these SIP revisions will not interfere with any applicable requirements for CO and ozone attainment and reasonable further progress (RFP) or any other requirements of the CAA applicable to the Phoenix area. The basis for these findings are discussed in the proposal for today's action. *See* 67 FR 52433.

Finally, EPA is approving various Arizona statutes amending the VEI programs and the latest revisions to the basic and enhanced VEI program regulations. Specifically, we are approving the following Arizona statutes:

Amendments to Arizona Revised Statutes (ARS) 49–541, 49–542.05, 49–544, 49–545, 49–551 and the repeal of 49–542.01 submitted to EPA as a SIP revision on July 6, 2001.

Amendments to ARS 49–542, 49–543, and the repeal of 49–541.01 submitted to EPA as a SIP revision on April 10, 2002.

We are also approving the following Arizona regulations:

Arizona Administrative Code (AAC), Title 18, Chapter 2, Article 10 (except for AAC R 18–2–1020) ''Motor Vehicles; Inspection and Maintenance'' as of December 31, 2000, submitted to EPA as a SIP revision on July 6, 2001.

Amendments to AAC R 18–2–1006 and 18–2–1019, and the repeal of AAC R 18–2–1014 and R 18–2–1015 submitted to EPA as a SIP revision on April 10, 2002.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 2003. Filing a petition for reconsideration by the Administrator of this final rule does

[1] As an unclassified CO nonattainment area that has been redesignated to attainment, the Tucson area does not have a statutory requirement to implement a basic I/M program. The area, however, has relied on the program to both attain and maintain the CO standard.

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping requirements.

Dated: October 31, 2002.

Alexis Strauss,

Acting Regional Administrator, Region 9.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(108) and (c)(109) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(108) Revisions to the Arizona State Implementation Plan for the Motor Vehicle Inspection and Maintenance Programs, submitted on July 6, 2001.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) Section 49–551 as amended in Section 27 of Arizona Senate Bill 1427, 43rd Legislature, 2nd Regular Session (1998), approved by the Governor on May 29, 1998.

(*2*) Section 49–544 as amended in Section 15 of Arizona Senate Bill 1007, 43rd Legislature, 4th Special Session (1998), approved by the Governor on May 20, 1998.

(*3*) Section 49–541 as amended in Section 44 of Arizona House Bill 2189, 44th Legislature, 1st Regular Session (1999), approved by the Governor on May 18, 1999.

(*4*) Section 49–542.01 repealed in Section 3 and Section 49–545 as amended in Section 5 of Arizona House Bill 2104, 44th Legislature, 2nd Regular session (2000), approved by the Governor on April 28, 2000.

(*5*) Section 49–542.05 as added in Section 23 of Arizona Senate Bill 1004, 44th Legislature, 7th Special Session (2000), approved by the Governor on December 14, 2000.

(B) Arizona Administrative Code.

(*1*) Title 18, Chapter 2, Article 10 (except for AAC R 18–2–1020) ''Motor Vehicles; Inspection and Maintenance'' as adopted on December 31, 2000.

(109) Revisions to the Arizona State Implementation Plan for the Motor Vehicle Inspection and Maintenance Programs, submitted on April 10, 2002 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) Section 49–542 as amended in Section 9, Section 49–543 as amended in Section 11, and Section 49–541.01 repealed in Section 29 of Arizona House Bill 2538, 45th Legislature, 1st Regular Session (2001), approved by the Governor on May 7, 2001.

(B) Arizona Administrative Code.

(*1*) Amendments to AAC R 18–2–1006 and 18–2–1019, and the repeal of AAC R 18–2–1014 and R 18–2–1015 effective January 1, 2002.

3. Section 52.123 is amended by adding paragraph (k) to read as follows:

§ 52.123 Approval status.

* * * * *

(k) The Administrator approves the revised Enhanced Vehicle Inspection and Maintenance Program for the Maricopa County carbon monoxide and ozone nonattainment area submitted by the Arizona Department of Environmental Quality on July 6, 2001 and April 10, 2002 as meeting the requirements of Clean Air Act sections 182(c)(3) and 187(a)(6) and the requirements for high enhanced inspection and maintenance programs contained in 40 CFR part 51, subpart S.

[FR Doc. 03–1234 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMIISSION

47 CFR Part 20

[CC Docket No. 94–102; FCC 02–318]

Compatibility With Enhanced 911 Emergency Calling Systems; PSAP E911 Service Readiness

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the Commission's October 2001 decision which addressed a petition from the city of Richardson, Texas by adopting rules that clarify what constitutes a valid Public Safety Anwering Point (PSAP) to trigger a wireless carrier's obligation to provide E911 service to the PSAP within six months. The document modifies the Commission's rules to provide additional clarification regarding PSAP readiness. The action is taken to respond to the petitions for reconsideration and to promote rapid E911 implementation.

DATES: Effective February 21, 2003, except for §§ 20.18(j)(4) and (5), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission is seeking emergency approval from the Office of Management and Budget for these collections. Public comment on the information collections on these PRA burdens are due March 24, 2003. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

FOR FURTHER INFORMATION CONTACT: Jennifer Salhus, Attorney, 202–418–1310. For further information concerning the information collection contained in this Fourth Memorandum Opinion and Order, contact Judith Boley Herman, Federal Communications Commission, 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (Recon) in CC Docket No. 94–102; FCC 02–318, adopted November 21, 2002, and released November 26, 2002. The complete text of the Recon and the Supplemental Final Regulatory Flexibility Analysis is available on the Commission's Internet site, at *http://www.fcc.gov.,* and is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC. The text may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B4202, Washington, DC 20554 (telephone 202–863–2893).

Synopsis of the Order on Reconsideration

1. The Recon responds to two petitions for reconsideration of the Commission's Order (60 FR 55618, November 2, 2001) in this proceeding. The Order, in further response to a petition filed by the city of Richardson, Texas, adopted rules clarifying what constitutes a valid PSAP request to trigger a wireless carrier's obligation to provide E911 service to that PSAP within six months. The Recon modifies

the Commission's rules to provide additional clarification as to PSAP readiness.

2. The Recon first adopts procedural guidelines for requesting documentation predictive of a PSAP's readiness to receive and utilize the E911 service it has requested. Specifically, the Recon provides that, where a wireless carrier requests such documentation from a PSAP within 15 days of receiving the PSAP's request for E911 service, the PSAP must respond within 15 days or the carrier's six-month implementation period will be tolled until such documentation is provided. (*See* paragraphs 9 through 12 of the full text of the Recon.)

3. Second, the Recon clarifies that the readiness showing is for the purpose of commencing the wireless carrier's six-month implementation obligation. The Recon also establishes a procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their compliance obligation temporarily tolled, if the PSAP is not ready to receive the information at the end of the six-month period and the carrier files a certification to that effect with the Commission. (*See* paragraphs 14 through 21 of the full text of the Recon.)

7. Finally, the Recon clarifies that nothing in the Commission's rules precludes wireless carriers and PSAPs from mutually agreeing to an implementation schedule different from that prescribed in the Commission's rules. (*See* paragraph 29 of the full text of the Recon.)

Paperwork Reduction Act of 1995 Analysis

8. This Recon has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain new reporting and information collections. Implementation of these new reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act. The Commission is seeking this approval on an emergency basis and will publish a notice of effective date in the **Federal Register** when OMB approval for these PRA burdens is received. The Commission is seeking public comment on these PRA burdens. Public and agency comments are due March 24, 2003. Comments should address:

- Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility.
- The accuracy of the Commission's burden estimates.
- Ways to enhance the quality, utility, and clarity of the information collected.
- Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

9. A copy of any comments on the information collections contained in this Recon should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 Twelfth Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Kim A. Johnson, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Docket Library, Room 10236, New Executive Office Building (NEOB), 725 17th Street, NW., Washington, DC 20503 or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

OMB Approval Number: XXXX.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: City of Richardson, Texas, Recon Order.

Form No. N.A.

Type of Review: New information collection.

Respondents: Business or other for profit.

Number of Respondents: 1,358.

Estimated Time Per Response: 2–40 hours.

Total Annual Burden: 13,960 hours.

Cost to Respondents: 0.

Needs and Uses: The information and coordination burdens are needed to ensure the fairness of the Commission's E911 rules and to facilitate speedy E911 implementation.

Supplemental Final Regulatory Flexibility Analysis (SFRFA)

10. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared a Supplemental Regulatory Flexibility Analysis (SFRFA) of the estimated significant economic impact on small entities of the policies and rules adopted in the Recon. The analysis may be found in Appendix C of the full text of the Recon. This is a summary of the full SFRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Recon, including the SFRFA to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Recon Order

11. In response to petitions for reconsideration, the Commission amends its rules to clarify what constitutes a valid Public Safety Answering Point (PSAP) request to trigger a wireless carrier's obligation to provide enhanced 911 (E911) service to the PSAP within six months. Specifically, the Recon adopts procedural guidelines for requesting documentation predictive of a PSAP's readiness to receive and utilize the E911 service it has requested, by specifying that where a wireless carrier requests such documentation from a PSAP within 15 days of receiving the PSAP's request for E911 service, the PSAP must respond within 15 days or the carrier's six-month implementation period will be tolled until such documentation is provided. The Recon also clarifies that the PSAP readiness showing is for the purpose of commencing the wireless carrier's six-month implementation obligation, and establishes a procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their compliance obligation temporarily tolled, if the PSAP is not ready to receive the information at the end of the six-month period and the carrier files a certification to that effect with the Commission. Finally, the Recon clarifies that nothing in the Commission's rules precludes wireless carriers and PSAPs from mutually agreeing to an implementation schedule different from that prescribed by the Commission's rules.

12. The actions adopted in the Recon are intended to promote communication between wireless carriers, local exchange carriers (LECs) and PSAPs and to provide further clarity regarding their respective obligations in implementing wireless E911. Wireless E911 implementation is very situation-specific and can vary significantly from jurisdiction to jurisdiction and from carrier to carrier, depending on a number of factors. The clarifications adopted in the Recon are also intended to facilitate the implementation process by encouraging parties to communicate with each other early in the E911 implementation process, and to maintain a constructive, on-going dialog throughout the implementation process.

B. Summary of Significant Issues Raised by the Public in Response to the FRFA

13. The Commission received two petitions for reconsideration of its decision in the Order. One petitioner, Cingular Wireless LLC (Cingular) raises several procedural arguments against the validity of the decision adopted in the Order, based on the requirements of the Administrative Procedure Act. In

support, several small carriers filed comments also challenging the decision on a procedural basis, arguing that the decision contravenes the provisions of the RFA because it does not take account of, and attempt to reduce, the disproportionate burdens placed on small and rural carriers. These smaller carriers maintain that, in order to minimize the danger of unnecessary economic outlay on small carriers, the Commission should impose an actual-readiness requirement on PSAPs operating in areas where rural, small and mid-sized carriers do not have a large customer base to absorb their E911 implementation costs and are thus more vulnerable to delays in implementation caused by a PSAP's inability to receive and utilize the E911 data supplied by the carrier. The Commission is aware of the concerns of small and mid-sized rural carriers and discussed these concerns in the FRFA. However, as the Commission has iterated throughout this proceeding, any failure in E911 communications, regardless of whether the carrier is small or large, or whether the carrier has a large customer base or small, can result in tragedy. Nonetheless, the Commission has tried wherever possible to ease the regulatory burden in this proceeding on small entities. The Commission's phased-in approach to E911 implementation is an example of this desire to accommodate the needs of small entities where it does not compromise our commitment to the goals of this proceeding.

14. The FRFA addresses the issue of whether to adopt an actual-readiness requirement on PSAPs and finds that the readiness showing adopted in the Order ''will in fact reduce the vulnerability of the smaller carriers, as they will be working along with the PSAPs to ensure implementation of E911 service on a timely basis, and will better be able to plan their progression and allocation of resources during the implementation process * * *.'' The FRFA concludes that, ''Considering the potential burdens placed on all small entities, we find that the institution of objective criteria by rule amendment will benefit all PSAPs and carriers, including small entities, by more clearly defining E911 readiness, thus reducing the potential for misunderstanding between parties, and by reducing instances of delay in E911 implementation. In turn, this will reduce the likelihood that any PSAP or carrier, including all small entities, will have to expend its limited capital resources prematurely and/or improvidently.''

15. The Recon takes several steps to mitigate the economic risk to smaller carriers. First, as discussed in paragraphs 9 through 12 of the full text, the Recon responds to carrier comment that indicates the present rule does not specify time limits for responding to a carrier's request for PSAP readiness documentation, by establishing that where a wireless carrier requests readiness documentation in writing within 15 days of receiving the PSAP's request for E911 service, the PSAP will have 15 days to provide such documentation. The Commission believes that these 15-day timeframes will both reduce a carrier's ability to use a documentation request as a delaying tactic, and minimize unnecessary carrier expenditures in those situations where the PSAP is unable to demonstrate that it will be ready to receive and utilize the requested E911 information by the end of the six-month period allotted for carrier compliance. The Recon also acknowledges, as discussed in paragraph 14, that the current rules do not provide for situations where a PSAP has made the upfront readiness showing necessary to trigger Phase II implementation, but turns out to be incapable of receiving Phase II information at the end of the six-month implementation period. To address such situations, the Recon Order modified the Commission's rules in several respects. These modifications are set out in detail in paragraphs 15 through 21 of the Recon Order.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

16. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Nationwide, there are 4.44 million small business firms, according to SBA reporting data.

17. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations.

18. The definition of ''small governmental jurisdiction'' is one with populations of fewer than 50,000. There are approximately 85,006 governmental jurisdictions in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

19. Neither the Commission nor the SBA has developed definitions for small providers of the specific industries affected. Therefore, throughout our analysis, the Commission uses the closest applicable definition under the SBA rules, the North American Industry Classification System (NAICS) standards for ''Cellular and Other Wireless Telecommunications'' and ''Wired Telecommunications Carriers.'' According to this standard, a small entity is one with no more than 1,500 employees. To determine which of the affected entities in the affected services fit into the SBA definition of small business, the Commission will refer to Table 5.3 in *Trends in Telephone Service (Trends)* a report published annually by the Commission's Wireline Competition Bureau.

20. We have included small incumbent local exchange carriers in this RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

Local Exchange Carriers. According to the most recent *Trends* data, 1,329 incumbent carriers reported that they were engaged in the provision of local exchange services. *Trends* indicates that of these entities, 1,024 local exchange carriers report that, in combination with their affiliates, they have 1,500 or fewer employees, and would thus be considered small businesses as defined by NAICS.

Competitive Access Providers and Competitive Local Exchange Carriers (CAPs and CLECs). Trends indicates that 532 CAPs and CLECs, 134 local resellers, and 55 other local exchange carriers reported that they were engaged in the provision of competitive local exchange services. The Commission does not have data specifying the number of these carriers that are not independently owned and operated. However, *Trends* states that a total of 595 of these entities employ 1,500 individuals, thus qualifying as small entities.

Wireless Telephone Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers. There are 858 entities in this category as estimated in *Trends*, and 291 such licensees in combination with their affiliates have 1,500 or fewer employees, and thus qualify as small businesses using the NAICS guide as small businesses.

Special Mobile Radio (SMR) Dispatch. Trends estimates 289 entities in this category and all 289 licensees, in combination with their affiliates, have 1,500 or fewer employees, and thus qualify as small entities using the NAICS guide.

Other Mobile Service Providers. Trends estimates that there are 32 providers of other mobile services, and again using the NAICS standard, all 32 providers of other mobile services utilize with their affiliates 1,500 or fewer employees, and thus may be considered small entities.

Toll Service Providers. Trends calculates that there are 932 toll service providers, and that 832 toll service providers with their affiliates have 1,500 or fewer employees and thus qualify as small entities as defined by NAICS.

Offshore Radiotelephone Service. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this SFRFA, that all of the 55 licensees are small entities, as that term is defined by NAICS.

Public Safety Answering Points. Neither the Commission nor the SBA has developed a definition of small entities applicable to PSAPs. In order to give a numerical quantification of the number of PSAPs that are small entities affected by the rule modifications, it appears there are approximately 5,000 primary PSAPs nationwide. For purposes of this SFRFA, we assume that all of the PSAPs are small entities, and may be affected by the rule amendments.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

21. As indicated in paragraphs 15 through 21 of the Recon, in order to toll the six-month implementation period, a wireless carrier must file a certification with the Commission that it has completed all necessary steps towards E911 implementation that are not dependent on PSAP readiness and that the PSAP is not ready to receive the information at the end of the six month period. Additionally, the Commission clarifies that nothing in our rules precludes wireless carriers and PSAPs from mutually agreeing to an implementation schedule different from that prescribed by the Commission's rules.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The Commission is limited in this proceeding as to minimizing the burden on small entities. The proceeding is intended to provide all Americans with the most reliable, responsive emergency services that are technologically possible. The critical nature of this goal demands that all entities involved, regardless of size, bear the same responsibility for complying with requirements adopted to expedite reaching this goal. A delay in response caused by a small entity could result in the same fatal consequences as a delay caused by a large entity.

23. The Commission, upon review of the petitions for reconsideration of the Order, could have elected to simply deny the petitions and leave the rules as is, or it could have modified the rules to intensify the demonstration requirements on PSAPs. Instead the Commission makes certain clarifications to the rules to dispel some of the existing confusion as to PSAP readiness and the decision adopted in the Order, and modifies the rules to accommodate certain of the carrier's continuing concerns, while refraining from imposing additional burdens on PSAPs, most of whom are either small or mid-sized entities.

24. First, the Recon, in paragraphs 9 through 12 clarifies the rules along the lines suggested by two wireless carriers by establishing the parallel 15-day timeframe for carrier requests and PSAP responses in certain instances where the PSAP does not provide readiness documentation simultaneous with its request for E911 service. The Commission takes this action to promote early communication between wireless carriers and PSAPs, to expedite the E911 implementation process, to reduce a carrier's ability to use a documentation request as a delaying tactic, while minimizing unnecessary carrier expenditures where the PSAP is unable to demonstrate that it will be E911 capable by the end of the six-month period allotted for carrier compliance. This modification thus benefits both small and mid-sized wireless carriers and PSAPs and strengthens the Commission's efforts to encourage necessary cooperation between carriers and PSAPs in achieving truly responsive E911 implementation.

25. Second, to address situations in which a PSAP has made the upfront readiness showing but turns out to be incapable of receiving E911 Phase II information at the end of the six-month implementation period, the Recon amends 47 CFR 20.18(j) in several ways. (*See* paragraphs 14 through 21 of the Recon.) The Recon clarifies that the readiness showing is for the purpose of commencing the wireless carrier's six-month implementation obligation. The Recon also establishes a certification procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness may have their six-month compliance obligation temporarily tolled. These procedures, set out in paragraphs 15 through 21 of the Recon, minimize the financial risk to wireless carriers while providing PSAPs with an opportunity to respond and set up several other restrictions in the certification procedure to avoid abuse of the process by all parties involved.

26. Several wireless carrier commenters recommend that the Commission amend its rules to require that the PSAP obtain the local exchange carrier's (LEC's) written commitment to complete the required Automated Location Information (ALI) database upgrades within the six-month period. As discussed in paragraph 23 of the Recon, the Commission does not adopt such a regulation. In paragraph 24, the Commission also declines to adopt a

second, alternative proposal that would require PSAPs to acquire copies of an LEC's schedule of ALI database upgrade, because PSAPs are not in the best position to furnish such documentation. In paragraph 25 of the Recon, the Commission directs the Wireless Telecommunications Bureau to collect additional information periodically from LECs regarding the status of their efforts in connection with wireless E911 deployment to PSAPs and to consumers.

27. *Report to Congress:* The Commission will send a copy of this Recon, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of this Recon, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

28. The Petition for Reconsideration filed by Sprint is granted to the extent provided in the full text of the Recon and that the Petition is otherwise denied.

29. The Petition for Reconsideration filed by Cingular is denied.

30. Part 20 of the Commission's rules is amended as indicated in the rule changes section of this summary, effective February 21, 2003, except for §§ 20.18(j)(4) and (5), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission is seeking emergency approval from the Office of Management and Budget for these collections. Public comment on the information collections on these PRA burdens are due March 24, 2003. The Commission will publish a document in the **Federal Register** announcing the effective date for these sections.

31. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the Recon, including the Supplemental Final Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carrier, Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.18(j) is revised to read as follows:

§ 20.18 911 Service.

* * * * *

(j) *Conditions for enhanced 911 services.* (1) *Generally.* The requirements set forth in paragraphs (d) through (h) of this section shall be applicable only if the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and the Public Safety Answering Point is capable of receiving and utilizing the data elements associated with the service and a mechanism for recovering the Public Safety Answering Point's costs of the enhanced 911 service is in place.

(2) *Commencement of six-month period.* (i) Except as provided in paragraph (ii) of this section, for purposes of commencing the six-month period for carrier implementation specified in paragraphs (d), (f) and (g) of this section, a PSAP will be deemed capable of receiving and utilizing the data elements associated with the service requested, if it can demonstrate that it has:

(A) Ordered the necessary equipment and has commitments from suppliers to have it installed and operational within such six-month period; and

(B) Made a timely request to the appropriate local exchange carrier for the necessary trunking, upgrades, and other facilities.

(ii) For purposes of commencing the six-month period for carrier implementation specified in paragraphs (f) and (g) of this section, a PSAP that is Phase I-capable using a Non-Call Path Associated Signaling (NCAS) technology will be deemed capable of receiving and utilizing the data elements associated with Phase II service if it can demonstrate that it has made a timely request to the appropriate local exchange carrier for the ALI database upgrade necessary to receive the Phase II information.

(3) *Tolling of six-month period.* Where a wireless carrier has served a written request for documentation on the PSAP within 15 days of receiving the PSAP's request for Phase I or Phase II enhanced 911 service, and the PSAP fails to respond to such request within 15 days of such service, the six-month period for carrier implementation specified in paragraphs (d), (f), and (g) of this section will be tolled until the PSAP provides the carrier with such documentation.

(4) *Carrier certification regarding PSAP readiness issues.* At the end of the six-month period for carrier implementation specified in paragraphs (d), (f) and (g) of this section, a wireless carrier that believes that the PSAP is not capable of receiving and utilizing the data elements associated with the service requested may file a certification with the Commission. Upon filing and service of such certification, the carrier may suspend further implementation efforts, except as provided in paragraph (j)(4)(x) of this section.

(i) As a prerequisite to filing such certification, no later than 21 days prior to such filing, the wireless carrier must notify the affected PSAP, in writing, of its intent to file such certification. Any response that the carrier receives from the PSAP must be included with the carrier's certification filing.

(ii) The certification process shall be subject to the procedural requirements set forth in sections 1.45 and 1.47 of this chapter.

(iii) The certification must be in the form of an affidavit signed by a director or officer of the carrier, documenting:

(A) The basis for the carrier's determination that the PSAP will not be ready;

(B) Each of the specific steps the carrier has taken to provide the E911 service requested;

(C) The reasons why further implementation efforts cannot be made until the PSAP becomes capable of receiving and utilizing the data elements associated with the E911 service requested; and

(D) The specific steps that remain to be completed by the wireless carrier and, to the extent known, the PSAP or other parties before the carrier can provide the E911 service requested.

(iv) All affidavits must be correct. The carrier must ensure that its affidavit is correct, and the certifying director or officer has the duty to personally determine that the affidavit is correct.

(v) A carrier may not engage in a practice of filing inadequate or incomplete certifications for the purpose of delaying its responsibilities.

(vi) To be eligible to make a certification, the wireless carrier must have completed all necessary steps toward E911 implementation that are not dependent on PSAP readiness.

(vii) A copy of the certification must be served on the PSAP in accordance with § 1.47 of this chapter. The PSAP

may challenge in writing the accuracy of the carrier's certification and shall serve a copy of such challenge on the carrier. *See* §§ 1.45 and 1.47 and §§ 1.720 through 1.736 of this chapter.

(viii) If a wireless carrier's certification is facially inadequate, the six-month implementation period specified in paragraphs (d), (f) and (g) of this section will not be suspended as provided for in paragraph (j)(4) of this section.

(ix) If a wireless carrier's certification is inaccurate, the wireless carrier will be liable for noncompliance as if the certification had not been filed.

(x) A carrier that files a certification under paragraph (j)(4) of this section shall have 90 days from receipt of the PSAP's written notice that it is capable of receiving and utilizing the data elements associated with the service requested to provide such service in accordance with the requirements of paragraphs (d) through (h) of this section.

(5) *Modification of deadlines by agreement.* Nothing in this section shall prevent Public Safety Answering Points and carriers from establishing, by mutual consent, deadlines different from those imposed for carrier and PSAP compliance in paragraphs (d), (f), and (g)(2) of this section.

* * * * *

[FR Doc. 03–1326 Filed 1–21–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Address Change for Submission of Reports

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We are updating the address for the submission of reports on specimens of endangered species taken in defense of self or others, or in the course of official duty by employees of Federal or State land management or conservation agencies.

DATES: This rule is effective on January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Richard McDonald, Chief, Branch of Investigations, Office of Law Enforcement, U.S. Fish and Wildlife Service, telephone (703) 358–1949, fax (703) 358–1947.

SUPPLEMENTARY INFORMATION:

Background

Regulations contained in title 50 of the Code of Federal Regulations, Part 17.21, provide for the take of endangered species in defense of self or others, or in the course of official duty, by employees of Federal or State land management or conservation agencies (40 FR 44412). These regulations state that when take of endangered species occurs under any of the above circumstances, a report must be submitted to our Office of Law Enforcement within five days. The address for the submission of these reports has changed since the publication of these regulations on September 26, 1975. This rule provides the current address for the submission of these reports.

Required Determinations

We have reviewed this rule under the following statutes and Executive Orders that govern the rulemaking process: Executive Order 12866 (Regulatory Planning and Review); Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*); Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2); Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*); Executive Order 12630 (Takings); Executive Order 13132 (Federalism); Executive Order 12988 (Civil Justice Reform); Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*); National Environmental Policy Act; Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes); and Executive Order 13211 (Energy Supply, Distribution, or Use). We have determined that this rule does not trigger any of the procedural requirements of these Executive Orders or statutes since this rule modifies only the address for the submission of reports on the take of endangered species under certain circumstances.

We have determined that the public notice and comment provisions of the Administrative Procedure Act (APA) do not apply to this rule because the rule is only dealing with matters of agency organization, procedure, or practice (5 U.S.C. 553(b)(3)(A).

Under the APA, our normal practice is to publish rules with a 30-day delay in effective date. But in this case, we are using the ''good cause'' exemption under 5 U.S.C. 553 (d)(3) to make this rule effective upon publication because it modifies only the address for the submission of reports on the take of endangered species under certain circumstances.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.21, revise paragraph (c)(4) to read as follows:

§ 17.21 Prohibitions.

* * * * *

(c) * * *

(4) Any taking under paragraphs (c)(2) and (3) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Office of Law Enforcement, 4401 North Fairfax Drive, LE–3000, Arlington, VA 22203, within five days. The specimen may only be retained, disposed of, or salvaged under directions from the Office of Law Enforcement.

* * * * *

Dated: December 16, 2002.

Craig Manson,

Assistant Secretary—Fish and Wildlife and Parks.

[FR Doc. 03–1414 Filed 1–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–2174–05; I.D. 011003B]

RIN 0648–AP78

Fisheries of the Northeastern United States; Magnuson-Stevens Fishery Conservation and Management Act Provisions; Northeast Multispecies Fishery

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

ACTION: Notice of continuation of regulations.

SUMMARY: The regulations contained in the interim rule published on August 1, 2002, in order to reduce overfishing, are continued for an additional 180 days, after which subsequent Secretarial action may be taken to ensure that sufficient measures to reduce overfishing stay in effect until implementation of Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). Amendment 13 will implement rebuilding plans for several groundfish stocks and address capacity issues in the fishery. This action is necessary to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) regarding the continuation of interim final regulations.

DATES: The interim final rule published August 1, 2002, at 67 FR 50292, which became effective August 1, 2002, continues in effect until superseded by a future rule action to be published in the **Federal Register**.

ADDRESSES: Copies of the small entity compliance guide prepared for the August 1, 2002, interim final rule are available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The letter is also accessible via the Internet at *http://www.nero.noaa.gov*. Copies of the August 1, 2002, interim final rule, including the Environmental Assessment/Regulatory Impact Review/ Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and public comments and responses are available upon request from the Regional Administrator. The EA/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail *Thomas.Warren@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2002, NMFS published an interim final rule (67 FR 50292), which implemented the Settlement Agreement Among Certain Parties in Conservation Law Foundation, et al. v. Evans, et al,., intended to reduce overfishing of species managed under the Northeast Multispecies FMP while the New England Fishery Management Council developed Amendment 13, which is intended to bring the FMP into compliance with the Sustainable Fisheries Act. The August 1, 2002, interim final rule was consistent with a Remedial Order issued on May 23, 2002, by the U.S. District Court for the District of Columbia (Court). The interim rule implemented restrictions consistent with the Settlement Agreement, approved by the Court. The management measures implemented by the August 1, 2002, interim rule are intended to remain in effect until implementation of Amendment 13 to the FMP, which, based on the May 23, 2002, Court Order, was required to be in effect no later than August 22, 2003.

Due to the need for additional time to address concerns related to the Northeast Fisheries Science Center's trawl survey and the new biological reference points that have been developed for multispecies stocks, NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. On December 4, 2002, the Court granted an extension of the Court-ordered timeline for Amendment 13 implementation until May 1, 2004.

Pursuant to section 305(c) of the Magnuson-Stevens Act, the August 1, 2002, interim rule may remain in effect for 180 days and may be extended through publication in the **Federal Register**, for one additional period of 180 days, provided the public has had an opportunity to comment on the interim rule. The public was given such opportunity to comment in the form of a proposed rule before the final interim rule was published. NMFS has determined that it is necessary to continue this interim rule to reduce overfishing. Because the management measures implemented by the August 1, 2002, interim final rule were written in such a way as to be effective indefinitely, no formal regulatory action is necessary. Instead, to comply with section 305(c) of the Magnuson-Stevens Act, it is necessary only to publish in the **Federal Register** a Notice of Continuation of Regulations to inform the public that NMFS has decided to continue these regulations. The impacts of implementing the Settlement Agreement measures for a period of 1 year were analyzed in the Environmental Assessment completed for the August 1, 2002, interim final rule.

Because the schedule for implementation of Amendment 13 was extended until May 1, 2004, additional Secretarial action may be necessary to continue sufficient management measures to reduce overfishing beyond July 27, 2003, until the implementation of Amendment 13 (May 1, 2004). Any such action would be accomplished through additional rulemaking. Should NMFS determine that such action is unnecessary, a rule may need to be published to restore certain regulations that existed prior to publication of the August 1, 2002, interim rule.

The August 1, 2002 interim final rule was determined to be significant for purposes of Executive Order 12866.

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

Dated: January 16, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–1374 Filed 1–16–03; 4:05 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 011303D]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

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

ACTION: Closures and openings.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the interim 2003 total allowable catch (TAC) of Atka mackerel in these areas. NMFS is also announcing the opening and closing dates of the first and second directed fisheries within the harvest limit area (HLA) in Statistical Areas (areas) 542 and 543. These actions are necessary to prevent exceeding the HLA limits established for the Central (area 542) and Western (area 543) Aleutian Districts pursuant to the interim 2003 Atka mackerel TAC.

DATES: Prohibition of directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2003, until superseded by the notice of Final 2003 Harvest Specifications for Groundfish, which will be published in the **Federal Register**. The first directed fisheries in the HLA in area 542 and area 543 are open effective 1200 hrs, A.l.t., January 24, 2003. The first HLA

fishery in area 542 will remain open until 1200 hrs, A.l.t., January 29, 2003. The first HLA fishery in area 543 will remain open until 1200 hrs, A.l.t., January 28, 2003. The second directed fisheries in the HLA in area 542 and area 543 open effective 1200 hrs, A.l.t., January 31, 2003. The second HLA fishery in area 542 will remain open until 1200 hrs, A.l.t., February 5, 2003. The second HLA fishery in area 543 will remain open until 1200 hrs, A.l.t., February 4, 2003.

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.

The interim TAC for other gear in the Eastern Aleutian District and the Bering Sea subarea is 2,815 metric tons (mt) as established by the Interim 2003 Harvest Specifications for Groundfish (67 FR 78739, December 26, 2002). See § § 679.20(c)(2)(ii) and 679.20(a)(8)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim other gear TAC for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,215 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543 at 48 hours after the closure of the area 541 Atka mackerel directed fishery. The Regional Administrator has established the opening date for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either 542 or 543. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the DATES section of this notice.

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS.

In accordance with § 679.20(a)(8)(ii)(C)(*1*), the HLA portion of the interim TAC in areas 542 and 543 are 7,382 mt and 6,110 mt respectively. Based on those apportionments and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543, the harvest limit for each HLA directed fishery in areas 542 and 543 are as follows: For the first directed fishery in area 542, 3,691 mt, for the first directed fishery in area 543, 3,055 mt, for the second directed fishery in area 542, 3,691 mt, for the second directed fishery in area 543, 3,055 mt. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed under the **DATES** section of this notice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fisheries, lead to exceeding the interim TACs, and therefore reduce the public's ability to use and enjoy the fishery resource.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 15, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–1376 Filed 1–16–03; 3:13 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 011402B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the first seasonal allowance of the pollock interim total allowable catch (TAC) for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 21, 2003, until superseded by the notice of Final 2003 Harvest Specifications of Groundfish of the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

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

The first seasonal allowance of the pollock interim TAC in Statistical Area 630 of the GOA is 1,222 metric tons (mt) as established by the interim 2003 harvest specifications for groundfish of the GOA (67 FR 78733, December 26, 2002).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal allowance of the pollock interim TAC in

Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 622 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the interim TAC, and therefore reduce the public's ability to use and enjoy 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 required by section 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 15, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–1375 Filed 1–16–03; 3:13 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–2307–01; I.D. 011403C]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543

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

ACTION: Notification.

SUMMARY: NMFS is notifying registered vessels of their assignments for the A season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the A season HLA limits established for area 542 and area 543 pursuant to the interim 2003 harvest specifications for groundfish.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2003, until 1200 hrs, A.l.t., April 15, 2003.

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.

In accordance with § 679.20(a)(8)(iii)(A), all vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. In accordance with § 679.20(a)(8)(iii)(A)(1), all vessels using trawl gear for directed fishing for Atka mackerel in the HLA that wish to participate in the A season HLA fishery must register with NMFS by 4:30 pm, A.l.t. on the first working day following January 1. Eight vessels have registered with NMFS to fish in the A season HLA fisheries in areas 542 and/or 543. In order to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time and in accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

Vessels that will participate in the first HLA directed fishery in area 542 and/or the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: Federal Fishery Permit number (FFP) 3423 Alaska Warrior, FFP 2733 Seafreeze Alaska, FFP 2134 Ocean Peace, and FFP 3819 Alaska Spirit.

Vessels that will participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) are as follows: FFP 4093 Alaska Victory, FFP 2443 Alaska Juris, FFP 3400 Alaska Ranger, and FFP 3835 Seafisher.

Classification

This action responds to the best available information. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately notify each vessel of its assignment to allow the harvest of the A season HLA fisheries in area 542 and area 543 constitutes 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)(3)(B) and 50 CFR 679.20(a)(8)(iii), as such procedures would be unnecessary and contrary to the public interest. This notice merely advises the owners of these vessels of the results of a random assignment required by regulation. Similarly, the need to implement these measures in a timely fashion and to notify each vessel of their assignment to allow the harvest of the A season HLA limits established for area 542 and area 543 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and 679.22 and is exempt from review under Executive Order 12866.

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

Dated: January 15, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–1379 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 14
Wednesday, January 22, 2003

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 GOVERNMENT ETHICS

5 CFR Part 2606

RIN 3209–AA18

Privacy Act Rules

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics is issuing a proposed rule that would establish procedures relating to access, maintenance, disclosure, and amendment of records which are in OGE systems of records under the Privacy Act of 1974, and that would establish rules of conduct for OGE personnel who have responsibilities under that Act.

DATES: Public comments are invited and must be received by March 24, 2003.

ADDRESSES: Comments should be sent to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Ms. Newton. Electronic comments may also be sent to OGE's Internet E-mail address at *usoge@oge.gov* (such comments should include the caption ''Proposed Privacy Act Rules'').

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Attorney-Advisor, Office of Government Ethics, telephone: 202–208–8000, extension 1137; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, at 5 U.S.C. 552a(f), requires every agency that maintains a system of records covered by the Privacy Act to promulgate regulations that: (1) Establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him; (2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual; (3) establish procedures for the disclosure to the data subject upon his request of his record or information pertaining to him, including special procedures if deemed necessary, for the disclosure to the data subject of medical records, including psychological records, pertaining to him; (4) establish procedures for reviewing a request from the data subject concerning the amendment of any record or information pertaining to the data subject, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each data subject to be able to exercise fully his rights under the Privacy Act; and (5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of the first copy of the record provided as well as the cost of any search for and review of the record. In addition, section 552a(e)(9) of the Privacy Act requires an agency to establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of the Act, including any other rules and procedures adopted pursuant to the Act and the penalties for noncompliance.

The Privacy Act, at 5 U.S.C. 552a(e)(4), also requires each agency that maintains a system of records to publish in the **Federal Register** upon establishment or revision a notice of the existence and character of the system of records. In a separate notice published in the **Federal Register** today, OGE is proposing to revise and rename two existing Government-wide systems of records under the Privacy Act covering Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (OGE/GOVT–1) and Executive Branch Confidential Financial Disclosure Reports (OGE/GOVT–2). In addition, OGE is issuing, for the first time, five internal systems of records to cover current and former OGE employees: Pay, Leave and Travel Records (OGE/INTERNAL–1), Telephone Call Detail Records (OGE/INTERNAL–2), Grievance Records (OGE/INTERNAL–3), Computer Systems Activity and Access Records (OGE/INTERNAL–4), and Employee Locator and Emergency Notification Records (OGE/INTERNAL–5).

I. General Provisions

As proposed, subpart A of the rule would contain general provisions setting forth the purpose of the regulation (§ 2606.101), definitions that apply throughout the part (§ 2606.102), and a description of OGE's executive branch Governmentwide and internal systems of records (§ 2606.103). As proposed, subpart A of the rule would also specify OGE and agency responsibilities for the records systems (§ 2606.104), and would establish procedures whereby an individual can be notified in response to his request if any OGE system of records named by the individual contains a record pertaining to him (§ 2606.105).

In addition, subpart A would set forth Privacy Act rules of conduct and responsibilities for OGE employees who design, develop, operate, or maintain a system of records (§ 2606.106). These conduct and responsibilities rules would not apply to employees of other agencies concerned; they would be subject to their own agency's Privacy Act conduct and responsibilities rules. These conduct and responsibilities rules are authorized by subsection (e)(9) of the Privacy Act, and therefore are separate from the Standards of Ethical Conduct in 5 CFR part 2635. Various provisions in the Standards of Ethical Conduct (*e.g.*, 5 CFR 2635.703 regarding use of nonpublic information) would also apply to an employee's conduct as to records covered by the Privacy Act.

Overall, these proposed OGE Privacy Act rules would apply both to records in the new OGE internal systems of records as maintained by OGE itself, as well as the newly updated and revised OGE executive branch Governmentwide systems of records which are maintained both by OGE and departments and agencies throughout the executive branch. With respect to those other departments and agencies, these proposed regulations would set forth the overall procedures for the Governmentwide systems, while recognizing that most agencies have their own Privacy Act regulations specifying appropriate appeals officials for access and amendment denials as well as schedules of fees. The details of these agency variations are set forth in

the relevant proposed sections of the regulatory text, rather than here.

II. Access to Records and Accounting of Disclosures

Subpart B of the rule, as proposed, describes the access process, and the accounting of disclosures process. Section 2606.201 would detail what a requester would have to submit to obtain access to a record pertaining to him in a system of records. Section 2606.202 would set forth the procedures when a request for access is received. Section 2606.203 would set forth the procedures for granting access, including the forms of identification necessary to gain access to requested records. Section 2606.203 would also state how a record in a system of records may be accessed on behalf of a minor, by a legal guardian, when the requester is accompanied by another individual, or when the request is for certain medical records. Section 2606.204 would describe the procedure for appealing a denial of an initial request for access to a record or a no record response. Section 2606.205 would describe what should be included in the official decision on an appeal from an initial denial of access. Section 2606.206 would set the fees that may be charged by the Office (or another agency not having its own Privacy Act fee schedule) for making copies of a record. Section 2606.207 would describe the accounting of disclosures that are kept with respect to OGE's systems of records.

III. Amendment of Records

As proposed, subpart C of the rule explains how a data subject may seek to amend his record. Section 2606.301 would set forth the procedures for requesting a record be amended, including the information that must be contained in the request, and would state that the requester has the burden of proof to justify an amendment request. Section 2606.302 would set forth the procedures to be followed when an amendment request is received.

If a request to amend a record is denied, the requester would be able to appeal the denial by following the procedures that would be set forth in § 2606.303. Section 2606.304 would set forth the procedures for responding to an appeal from an initial denial of a request to amend a record. Section 2606.304 also would set forth the information that should be included in the official appeal determination. Finally, § 2606.304(d) would provide procedures for a data subject to file a concise statement setting forth the reasons for his disagreement with the refusal to amend his records.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 60-day comment period. Interested persons are invited to submit written comments to the Office of Government Ethics on this proposed regulation, to be received on or before March 24, 2003. The Office of Government Ethics will review all comments received and consider making any modifications to this proposed rule that appear warranted in issuing its final rule.

Executive Order 12866

In promulgating this proposed rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has also been approved by the Office of Management and Budget under the Executive Order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this proposed rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it will primarily affect current and former executive branch Federal employees.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subpart II), the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Part 2606

Administrative practice and procedure, Archives and records, Conflict of interests, Government employees, Privacy Act.

Approved: January 10, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is proposing to amend subchapter A of chapter XVI of title 5 of the Code of Federal Regulations by adding part 2606 to read as follows:

PART 2606—PRIVACY ACT RULES

Subpart A—General Provisions

Sec.
2606.101 Purpose.
2606.102 Definitions.
2606.103 Systems of records.
2606.104 OGE and agency responsibilities.
2606.105 Rules for individuals seeking to ascertain if they are the subject of a record.
2606.106 OGE employee Privacy Act rules of conduct and responsibilities.

Subpart B—Access to Records and Accounting of Disclosures

2606.201 Requests for access.
2606.202 OGE or other agency action on requests.
2606.203 Granting access.
2606.204 Request for review of an initial denial of access.
2606.205 Response to a request for review of an initial denial of access.
2606.206 Fees.
2606.207 Accounting of disclosures.

Subpart C—Amendment of Records

2606.301 Requests to amend records.
2606.302 OGE or other agency action on requests.
2606.303 Request for review of an initial refusal to amend a record.
2606.304 Response to a request for review of a refusal to amend; disagreement statements.

Authority: 5 U.S.C. 552a, 5 U.S.C. App. (Ethics in Government Act of 1978).

Subpart A—General Provisions

§ 2606.101 Purpose.

This part sets forth the regulations of the Office of Government Ethics (OGE) implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a). It governs access, maintenance, disclosure, and amendment of records contained in OGE's executive branch Governmentwide and internal systems of records, and establishes rules of conduct for OGE employees who have responsibilities under the Act.

§ 2606.102 Definitions.

For the purpose of this part, the terms listed below are defined as follows:

Access means providing a copy of a record to, or allowing review of the original record by, the data subject or the requester's authorized representative, parent or legal guardian;

Act means the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

Amendment means the correction, addition, deletion, or destruction of a record or specific portions of a record;

Data subject means the individual to whom the information pertains and by whose name or other individual identifier the information is maintained or retrieved;

He, his, and *him* include she, hers and her.

Office or *OGE* means the U.S. Office of Government Ethics;

System manager means the Office or other agency official who has the authority to decide Privacy Act matters relative to a system of records;

System of records means a group of any records containing personal information controlled and managed by OGE from which information is retrieved by the name of an individual or by some personal identifier assigned to that individual;

Working day as used in calculating the date when a response is due means calendar days, excepting Saturdays, Sundays, and legal public holidays.

§ 2606.103 Systems of records.

(a) *Governmentwide systems of records.* The Office of Government Ethics maintains two executive branch Governmentwide systems of records: the OGE/GOVT–1 system of records, comprised of Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records; and the OGE/GOVT–2 system of records, comprised of Executive Branch Confidential Financial Disclosure Reports. These Governmentwide systems of records are maintained by OGE, and through Office delegations of authority, by Federal executive branch departments and agencies with regard to their own employees, applicants for employment, individuals nominated to a position requiring Senate confirmation, candidates for a position, and former employees.

(b) *OGE Internal systems of records.* The Office of Government Ethics internal systems of records are under OGE's physical custody and control and are established and maintained by the Office on current and former OGE employees regarding matters relating to the internal management of the Office. These systems of records consist of the OGE/INTERNAL–1 system, comprised of Pay, Leave and Travel Records; the OGE/INTERNAL–2 system, comprised of Telephone Call Detail Records; the OGE/INTERNAL–3 system, comprised of Grievance Records; the OGE/INTERNAL–4 system, comprised of Computer Systems Activity and Access Records; and the OGE/INTERNAL–5 system, comprised of Employee Locator and Emergency Notification Records.

§ 2606.104 OGE and agency responsibilities.

(a) The procedures in this part apply to:

(1) All initial Privacy Act access and amendment requests regarding records contained in an OGE system of records.

(2) Administrative appeals from an Office or agency denial of an initial request for access to, or to amend, records contained in an OGE system of records.

(b) For records contained in an OGE Governmentwide system of records, each agency is responsible (unless specifically excepted by the Office) for responding to initial requests for access or amendment of records in its custody and administrative appeals of denials thereof.

(c) For records and material of another agency that are in the custody of OGE, but not under its control or ownership, OGE may refer a request for the records to that other agency, consult with the other agency prior to responding, or notify the requester that the other agency is the proper agency to contact.

§ 2606.105 Rules for individuals seeking to ascertain if they are the subject of a record.

An individual seeking to ascertain if any OGE system of records contains a record pertaining to him must follow the access procedures set forth at § 2606.201(a) and (b).

§ 2606.106 OGE employee Privacy Act rules of conduct and responsibilities.

Each OGE employee involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record covered by the Privacy Act, shall comply with the pertinent provisions of the Act relating to the treatment of such information. Particular attention is directed to the following provisions of the Privacy Act:

(a) 5 U.S.C. 552a(e)(7)—The requirement to maintain in a system of records no record describing how any individual exercises rights guaranteed by the First Amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(b) 5 U.S.C. 552a(b)—The requirement that no agency shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, except under certain limited conditions specified in subsections (b)(1) through (b)(12) of the Privacy Act.

(c) 5 U.S.C. 552a(e)(1)—The requirement for an agency to maintain in its systems of records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive order.

(d) 5 U.S.C. 552a(e)(2)—The requirement to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

(e) 5 U.S.C. 552a(e)(3)—The requirement to inform each individual asked to supply information to be maintained in a system of records the authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purpose or purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual, if any, of not providing all or any part of the requested information.

(f) 5 U.S.C. 552a(b) and (e)(10)—The requirement to comply with established safeguards and procedures to ensure the security and confidentiality of records and to protect personal data from any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual on whom information is maintained in a system of records.

(g) 5 U.S.C. 552a(c)(1), (c)(2) and (c)(3)—The requirement to maintain an accounting of specified disclosures of personal information from systems of records in accordance with established Office procedures.

(h) 5 U.S.C. 552a(e)(5) and (e)(6)—The requirements to maintain all records in a system of records which are used by the agency in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination; and to make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes, prior to disseminating any record about an individual to any person other than an agency (unless the dissemination is required by the Freedom of Information Act, 5 U.S.C. 552).

(i) 5 U.S.C. 552a(d)(1), (d)(2) and (d)(3)—The requirement to permit individuals to have access to records pertaining to themselves in accordance with established Office procedures and to have an opportunity to request that such records be amended.

(j) 5 U.S.C. 552a(c)(4) and (d)(4)—The requirement to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act of any record that has been disclosed to the person or agency if an accounting of the disclosure was made; and, in any disclosure of information about which an individual has filed a statement of disagreement, to note clearly any portion of the record which is disputed and to provide copies of the statement (and if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested) to persons or other agencies to whom the disputed record has been disclosed.

(k) 5 U.S.C. 552a(n)—The requirement for an agency not to sell or rent an individual's name or address, unless such action is specifically authorized by law.

(l) 5 U.S.C. 552a(i)—The criminal penalties to which an employee may be subject for failing to comply with certain provisions of the Privacy Act.

Subpart B—Access to Records and Accounting of Disclosures

§ 2606.201 Requests for access.

(a) *Records in an OGE Governmentwide system of records.* An individual requesting access to records pertaining to him in an OGE Governmentwide system of records should submit a written request, which includes the words ''Privacy Act Request'' on both the envelope and at the top of the request letter, to the appropriate system manager as follows:

(1) *Records filed directly with OGE by non-OGE employees:* The Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

(2) *Records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency:* The DAEO at the department or agency concerned; or

(3) *Records filed with the Federal Election Commission by candidates for President or Vice President:* The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Records in an OGE Internal System of Records.* An individual requesting access to records pertaining to him in an OGE internal system of records should submit a written request, which includes the words ''Privacy Act Request'' on both the envelope and at the top of the request letter, to the Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(c) *Content of request.* (1) A request should contain a specific reference to the OGE system of records from which access to the records is sought. Notices of OGE systems of records subject to the Privacy Act are published in the **Federal Register**, and copies of the notices are available on OGE's Web site at *http://www.usoge.gov,* or upon request from OGE's Office of General Counsel and Legal Policy. A biennial compilation of such notices also is made available online and published by the Office of Federal Register at the GPO Access Web site (*http://www.access.gpo.gov/su_docs/aces/PrivacyAct.shtml*) in accordance with 5 U.S.C. 552a(f) of the Act.

(2) If the written inquiry does not refer to a specific system of records, it should include other information that will assist in the identification of the records for which access is being requested. Such information may include, for example, the individual's full name (including her maiden name, if pertinent), dates of employment, social security number (if any records in the system include this identifier), current or last place and date of Federal employment. If the request for access follows a prior request to determine if an individual is the subject of a record, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence, or a copy of the response to that request is attached.

(3) The request should state whether the requester wants a copy of the record, or wants to examine the record in person.

§ 2606.202 OGE or other agency action on requests.

A response to a request for access should include the following:

(a) A statement that there is a record or records as requested or a statement that there is not a record in the system of records;

(b) The method of access (if a copy of all the records requested is not provided with the response);

(c) The amount of any fees to be charged for copies of records under § 2606.206 of this part or other agencies' Privacy Act regulations as referenced in that section;

(d) The name, title, and telephone number of the official having operational control over the record; and

(e) If the request is denied in whole or in part, or no record is found in the system, a statement of the reasons for the denial, or a statement that no record has been found, and notice of the procedures for appealing the denial or no record finding.

§ 2606.203 Granting access.

(a) The methods for allowing access to records, when such access has been granted by OGE or the other agency concerned are:

(1) Examination in person in a designated office during the hours specified by OGE or the other agency;

(2) Providing photocopies of the records; or

(3) Transfer of records at the option of OGE or the other agency to another more convenient Federal facility.

(b) When a requester has not indicated whether he wants a copy of the record, or wants to examine the record in person, the appropriate system manager may choose the means of granting access. However, the means chosen should not unduly impede the data subject's right of access. A data subject may elect to receive a copy of the records after having examined them.

(c) Generally, OGE or the other agency concerned will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by OGE or the other agency and may require payment of any fee levied in accordance with an established fee schedule.

(d) When the data subject seeks to obtain original documentation, the

Office and the other agencies concerned reserve the right to limit the request to copies of the original records. Original records should be made available for review only in the presence of the appropriate system manager or his designee.

Note to paragraph (d) of § 2606.203: Section 2071(a) of title 18 of the United States Code makes it a crime to conceal, remove, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do so.

(e) *Identification requirements*—(1) *Access granted in person*—(i) *Current or former employees.* Current or former employees requesting access to records pertaining to them in a system of records may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have their identity verified by visual observation. If the current or former employee cannot be so identified by the official having operational control over the records, adequate identification documentation will be required, *e.g.*, an employee identification card, driver's license, passport, or other officially issued document with a picture of the person requesting access.

(ii) *Other than current or former employees.* Individuals other than current or former employees requesting access to records pertaining to them in a system of records must produce adequate identification documentation prior to being granted access. The extent of the identification documentation required will depend on the type of records to be accessed. In most cases, identification verification will be accomplished by the presentation of two forms of identification with a picture of the person requesting access (such as a driver's license and passport). Any additional requirements are specified in the system notices published pursuant to subsection (e)(4) of the Act.

(2) *Access granted by mail.* For records to be accessed by mail, the appropriate system manager shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the data subject of information required to be made available to the public by 5 U.S.C. 552, the Freedom of Information Act. When, in the opinion of the system manager, the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity may be required.

(3) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation, the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a criminal fine of up to $5,000 under subsection (i)(3) of the Act. In addition, depending upon the sensitivity of the records sought to be accessed, the appropriate system manager or official having operational control over the records may require such further reasonable assurances as may be considered appropriate, *e.g.*, statements of other individuals who can attest to the identity of the data subject. No verification of identity will be required of data subjects seeking access to records which are otherwise available to any person under 5 U.S.C. 552.

(4) *Inadequate identification.* If the official having operational control over the records in a system of records determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the appropriate system manager prior to denying the individual access. Whenever the system manager determines, in accordance with the procedures herein, that access will not be granted, the response will also include a statement of the procedures to obtain a review of the decision to deny access in accordance with § 2606.205.

(f) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon presenting suitable personal identification as otherwise provided under this section, may access on behalf of the minor any record pertaining to the minor in a system of records. A legal guardian, upon presentation of documentation establishing guardianship and suitable personal identification as otherwise provided under this section, may similarly act on behalf of a data subject declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction. Minors are not precluded from exercising on their own behalf rights given to them by the Privacy Act.

(g) *Accompanying individual.* A data subject requesting access to his records in a system of records may be accompanied by another individual of the data subject's choice during the course of the examination of the record. The official having operational control of the record may require the data subject making the request to submit a signed statement authorizing the accompanying individual's access to the record.

(h) *Access to medical records.* When a request for access involves medical or psychological records that the appropriate system manager believes requires special handling, the data subject should be advised that the material will be provided only to a physician designated by the data subject. Upon receipt of the designation and upon verification of the physician's identity as otherwise provided under this section, the records will be made available to the physician, who will disclose those records to the data subject.

(i) *Exclusion.* Nothing in these regulations permits a data subject's access to any information compiled in reasonable anticipation of a civil action or proceeding (see subsection (d)(5) of the Act).

(j) *Maximum access.* This regulation is not intended to preclude access by a data subject to records that are available to that individual under other processes, such as the Freedom of Information Act (5 U.S.C. 552) or the rules of civil or criminal procedure, provided that the appropriate procedures for requesting access thereunder are followed.

§ 2606.204 Request for review of an initial denial of access.

(a)(1) A data subject may submit a written appeal of the decision by OGE or the other agency to deny an initial request for access to records or a no record response.

(i) For records filed directly with OGE, the appeal must be submitted to the Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(ii) For records in OGE's executive branch Governmentwide systems of records that are filed directly with an agency (including the Federal Election Commission) other than OGE, the appeal must be submitted to the Privacy Act access appeals official as specified in the agency's own Privacy Act regulations or the respective head of the agency concerned if it does not have any Privacy Act regulations.

(2) The words ''Privacy Act Appeal'' should be included on the envelope and at the top of the letter of appeal.

(b) The appeal should contain a brief description of the records involved or copies of the correspondence from OGE

or the agency in which the initial request for access was denied. The appeal should attempt to refute the reasons given by OGE or the other agency concerned in its decision to deny the initial request for access or the no record finding.

§ 2606.205 Response to a request for review of an initial denial of access.

(a) If the OGE Director or agency reviewing official determines that access to the records should be granted, the response will state how access will be provided if the records are not included with the response.

(b) Any decision that either partially or fully affirms the initial decision to deny access shall inform the requester of the right to seek judicial review of the decision in accordance with 5 U.S.C. 552a(g) of the Privacy Act.

§ 2606.206 Fees.

(a) *Fees for records filed with OGE*—(1) *Services for which fees will not be charged:*

(i) The search and review time expended by OGE to produce a record;

(ii) The first copy of the records provided; or

(iii) The Office of Government Ethics making the records available to be personally reviewed by the data subject.

(2) *Additional copies of records.* When additional copies of records are requested, an individual may be charged $.15 per page.

(i) *Notice of anticipated fees in excess of $25.00.* If the charge for these additional copies amounts to more than $25.00, the requester will be notified and payment of fees may be required before the additional copies are provided, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

(ii) *Advance payments.* An advance payment before additional copies of the records are made will be required if:

(A) The Office estimates or determines that the total fee to be assessed under this section is likely to exceed $250.00. When a determination is made that the allowable charges are likely to exceed $250.00, the requester will be notified of the likely cost and will be required to provide satisfactory assurance of full payment where the requester has a history of prompt payment of Privacy Act fees, or will be required to submit an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) The requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). In such cases, the requester may be required to pay the full amount owed plus any applicable interest as provided by paragraph (a)(2)(iii) of this section, and to make an advance payment of the full amount of the estimated fee before the Office begins to process a new request.

(iii) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. To collect unpaid bills, the Office will follow the provisions of the Debt Collection Act of 1982, as amended (96 Stat. 1749 *et seq.*) and the Debt Collection Improvement Act of 1996 (110 Stat. 1321–358 *et seq.*), including the use of consumer reporting agencies, collection agencies, and offset.

(iv) *Remittance.* Remittance should be made by either a personal check, bank draft or a money order that is payable to the Department of the Treasury of the United States.

(b) *Fees for records filed with agencies other than OGE.* An agency shall apply its own Privacy Act fee schedule for records in OGE's executive branch Governmentwide systems that are filed directly with the agency. An agency that does not have a Privacy Act fee schedule may apply the fee schedule in this section.

§ 2606.207 Accounting of disclosures.

(a) The Office of Government Ethics or the other agency concerned will maintain an accounting of disclosures in cases where records about the data subject are disclosed from OGE's system of records except—

(1) When the disclosure is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552); or

(2) When the disclosure is made to those officers and employees of OGE or the other agency which maintains the records who have a need for the records in the performance of their duties.

(b) This accounting of disclosures will be retained for at least five years or for the life of the record, whichever is longer, and will contain the following information:

(1) A brief description of the record disclosed;

(2) The date, nature, and purpose for the disclosure; and

(3) The name and address of the individual, agency, or other entity to whom the disclosure is made.

(c) Under sections 102 and 105 of the Ethics in Government Act, 18 U.S.C. 208(d) and 5 CFR parts 2634 and 2640 of OGE's executive branch regulations, a requester other than the data subject must submit a signed, written application on the OGE Form 201 or agency equivalent form to inspect or receive copies of certain records, such as SF 278 Public Financial Disclosure Reports, Certificates of Divestiture, 18 U.S.C. 208(b)(1) and (b)(3) waivers, and OGE certified qualified blind and diversified trust instruments and other publicly available qualified trust materials. The written application requests the name, occupation and address of the requester as well as lists the prohibitions on obtaining or using the records. These applications are used as the accounting of disclosures for these records.

(d) Except for the accounting of a disclosure made under subsection (b)(7) of the Privacy Act for a civil or criminal law enforcement activity that is authorized by law, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

Subpart C—Amendment of Records

§ 2606.301 Requests to amend records.

(a) *Amendment request.* A data subject seeking to amend a record or records that pertain to him in a system of records must submit his request in writing in accordance with the following procedures, unless this requirement is waived by the appropriate system manager. Records not subject to the Privacy Act will not be amended in accordance with these provisions.

(b) *Addresses*—(1) *Records in an OGE Governmentwide system of records.* A request to amend a record in an OGE Governmentwide system of records should be sent to the appropriate system manager as follows:

(i) *Records filed directly with OGE by non-OGE employees:* The Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

(ii) *Records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency:* The DAEO at the department or agency concerned; or

(iii) *Records filed with the Federal Election Commission by candidates for President or Vice President:* The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(2) *Records in an OGE internal system of records.* A request to amend a record in an OGE Internal system of records should include the words ''Privacy Act Amendment Request'' on both the envelope and at the top of the request letter, and should be sent to the Deputy

Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(c) *Contents of request.* (1) A request to amend a record in an OGE Governmentwide system of records or an OGE internal system of records should include the words ''Privacy Act Amendment Request'' on both the envelope and at the top of the request letter.

(2) The name of the system of records and a brief description of the record(s) proposed for amendment must be included in any request for amendment. In the event the request to amend the record(s) is the result of the data subject's having gained access to the record(s) in accordance with the provisions concerning access to records as set in subpart B, copies of previous correspondence between the requester and OGE or the agency will serve in lieu of a separate description of the record.

(3) The exact portion of the record(s) the data subject seeks to have amended should be indicated clearly. If possible, proposed alternative language should be set forth, or, at a minimum, the reasons why the data subject believes his record is not accurate, relevant, timely, or complete should be set forth with enough particularity to permit OGE or the other agency concerned not only to understand the data subject's basis for the request, but also to make an appropriate amendment to the record.

(d) *Burden of proof.* The data subject has the burden of proof when seeking the amendment of a record. The data subject must furnish sufficient facts to persuade the appropriate system manager of the inaccuracy, irrelevance, untimeliness, or incompleteness of the record.

(e) *Identification requirement.* When the data subject's identity has been previously verified pursuant to § 2606.203, further verification of identity is not required as long as the communication does not suggest a need for verification. If the data subject's identity has not been previously verified, the appropriate system manager may require identification validation as described in § 2606.203.

§ 2606.302 OGE or other agency action on requests.

(a) *Time limit for acknowledging a request for amendment.* To the extent possible, OGE or the other agency concerned will acknowledge receipt of a request to amend a record or records within 10 working days.

(b) *Initial determination on an amendment request.* The decision of OGE or the other agency in response to a request for amendment of a record in a system of records may grant in whole, or deny any part of the request to amend the record(s).

(1) If OGE or the other agency concerned grants the request, the appropriate system manager will amend the record(s) and provide a copy of the amended record(s) to the data subject. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients.

(2) If OGE or the other agency concerned denies the request in whole or in part, the reasons for the denial will be stated in the response letter. In addition, the response letter will state:

(i) The name and address of the official with whom an appeal of the denial may be lodged; and

(ii) A description of any other procedures which may be required of the data subject in order to process the appeal.

§ 2606.303 Request for review of an initial refusal to amend a record.

(a)(1) A data subject may submit a written appeal of the initial decision by OGE or an agency denying a request to amend a record in an OGE system of records.

(i) For records which are filed directly with OGE, the appeal must be submitted to the Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(ii) For records which are filed directly with an agency (including the Federal Election Commission) other than OGE, the appeal must be submitted to the Privacy Act amendments appeals official as specified in the agency's own Privacy Act regulations, or to the respective head of the agency concerned if it does not have Privacy Act regulations.

(2) The words ''Privacy Act Appeal'' should be included on the envelope and at the top of the letter of the appeal.

(b) The request for review should contain a brief description of the record(s) involved or copies of the correspondence from OGE or the agency in which the request to amend was denied, and the reasons why the data subject believes that the disputed information should be amended.

§ 2606.304 Response to a request for review of an initial refusal to amend; disagreement statements.

(a) The OGE Director or agency reviewing official should make a final determination in writing not later than 30 days from the date the appeal was received. The 30-day period may be extended for good cause. Notice of the extension and the reasons therefor will be sent to the data subject within the 30-day period.

(b) If the OGE Director or agency reviewing official determines that the record(s) should be amended in accordance with the data subject's request, the OGE Director or agency reviewing official will take the necessary steps to advise the data subject, and to direct the appropriate system manager:

(1) to amend the record(s), and

(2) to notify previous recipients of the record(s) for which there is an accounting of disclosure that the record(s) have been amended.

(c) If the appeal decision does not grant in full the request for amendment, the decision letter will notify the data subject that he may:

(1) Obtain judicial review of the decision in accordance with the terms of the Privacy Act at 5 U.S.C. 552a(g); and

(2) File a statement setting forth his reasons for disagreeing with the decision.

(d)(1) A data subject's disagreement statement must be concise. The appropriate system manager has the authority to determine the ''conciseness'' of the statement, taking into account the scope of the disagreement and the complexity of the issues.

(2) In any disclosure of information about which an individual has filed a statement of disagreement, the appropriate system manager will clearly note any disputed portion(s) of the record(s) and will provide a copy of the statement to persons or other agencies to whom the disputed record or records has been disclosed and for whom an accounting of disclosure has been maintained. A concise statement of the reasons for not making the amendments requested may also be provided.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103580–02]

RIN 1545–BA53

Noncompensatory Partnership Options

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership. The proposed regulations generally provide that the exercise of a noncompensatory option does not cause the recognition of immediate income or loss by either the issuing partnership or the option holder. The proposed regulations also modify the regulations under section 704(b) regarding the maintenance of the partners' capital accounts and the determination of the partners' distributive shares of partnership items. Additionally, the proposed regulations contain a characterization rule providing that the holder of a noncompensatory option is treated as a partner under certain circumstances. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by April 29, 2003. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for May 20, 2003, at 10 a.m. must be received by April 29, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–103580–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:ITA:RU (REG–103580–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS internet site at *http://www.irs.gov/regs*. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Audrey W. Ellis, (202) 622–3060; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In a variety of situations, partnerships issue options or convertible instruments that allow the holder to acquire by purchase or conversion an equity interest in the partnership. On June 5, 2000, Treasury and the IRS issued Notice 2000–29 (2000–1 C.B. 1241) inviting public comment on the Federal income tax treatment of the exercise of an option to acquire a partnership interest, the exchange of convertible debt for a partnership interest, and the exchange of a preferred interest in a partnership for a common interest in that partnership.

In response to Notice 2000–29, Treasury and the IRS received a number of comments. Many commentators requested guidance on the treatment of options and other instruments that are issued by partnerships in connection with the performance of services (compensatory options).

These proposed regulations apply to certain call options, warrants, convertible debt, and convertible preferred equity that are not issued in connection with the performance of services (noncompensatory options). To expedite the issuance of guidance, these regulations do not address compensatory options. Nothing in the proposed regulations should be construed as creating any inference regarding the proper Federal income tax treatment of compensatory options. However, Treasury and the IRS are working on future guidance that will address the Federal income tax consequences of compensatory options and invite comments. In particular, Treasury and the IRS request comments on the proposed amendment to § 1.721–1(b)(1) that was published in the **Federal Register** on June 3, 1971 (36 FR 10787), and, more particularly, on the application of section 83 to the issuance of compensatory options and partnership capital interests in connection with the performance of services. In addition, Treasury and the IRS request comments on how to coordinate the tax treatment of partnership profits interests issued in connection with the performance of services (see Rev. Proc. 93–27 (1993–2 C.B. 343), as clarified in Rev. Proc. 2001–43 (2001–34 I.R.B. 191)) with the tax treatment of options to acquire partnership capital interests issued in connection with the performance of services.

Explanation of Provisions

1. Scope of Proposed Regulations

The proposed regulations describe certain of the income tax consequences of issuing, transferring, and exercising noncompensatory options. These proposed regulations apply only if the call option, warrant, or conversion right entitles the holder to the right to acquire an interest in the issuer (or to cash or property having a value equal to the value of such an interest).

The proposed regulations generally provide that the exercise of a noncompensatory option does not cause recognition of gain or loss to either the issuing partnership or the option holder. In addition, the proposed regulations modify the regulations under section 704(b) regarding the maintenance of the partners' capital accounts and the determination of the partners' distributive shares of partnership items. Finally, the proposed regulations contain a characterization rule providing that the holder of a call option, warrant, convertible debt, or convertible preferred equity issued by a partnership (or an eligible entity, as defined in § 301.7701–3(a), that would become a partnership if the option holder were treated as a partner) is treated as a partner under certain circumstances.

The rule providing for nonrecognition of gain or loss on the exercise of a noncompensatory option does not apply to any call option, warrant, or convertible debt issued by an eligible entity, as defined in § 301.7701–3(a), that would become a partnership under § 301.7701–3(f)(2) if the option, warrant, or conversion right were exercised. Treasury and the IRS request comments on whether the nonrecognition rule should be extended to such instruments.

2. Issuance, Exercise, and Lapse of Noncompensatory Options

Section 721(a) and § 1.721–1 provide that, with certain exceptions, no gain or loss is recognized to a partnership or any of its partners on the contribution of property to a partnership in exchange for an interest in the partnership. However, § 1.721–1 does not provide clear guidance as to the tax consequences to the holder of a noncompensatory option and the partnership upon the issuance, lapse, and exercise of a noncompensatory option to acquire a partnership interest. Many taxpayers have requested guidance clarifying the tax consequences of these transactions.

Generally, the proposed regulations do not treat the issuance of a noncompensatory option as a

transaction described in section 721. Therefore, the issuance of a noncompensatory option is taxed under general tax principles. Under these principles, the issuance of a noncompensatory call option or warrant (stand-alone option) is generally an open transaction for the issuer. The issuer's income or loss from the noncompensatory stand-alone option does not become fixed and determinable until the lapse, exercise, repurchase, or other termination of the option. For the holder of the noncompensatory stand-alone option, the purchase of the option is merely an investment in the option—a capital expenditure that is neither taxable to nor deductible by the holder. See Rev. Rul 78–182 (1978–1 C.B. 265). However, if the holder uses appreciated or depreciated property (property with a value greater or less than the holder's basis in the property) to acquire the noncompensatory stand-alone option, then the holder recognizes gain or loss in accordance with the provisions of section 1001, subject to the generally applicable rules governing the allowance of losses, such as section 707(b).

The proposed regulations do not change the rules relating to the issuance of convertible debt or convertible equity. Under general tax principles, the conversion right embedded in convertible debt or convertible equity typically is taken into account for tax purposes as part of the underlying instrument.

The proposed regulations also provide guidance on the tax consequences resulting from the exercise of a noncompensatory option. Section 1.721–1(b) provides that, to the extent that a partner gives up his right to be repaid all or a portion of his capital contribution in favor of another partner ''as compensation for services (or in satisfaction of an obligation),'' section 721 does not apply. Some commentators have expressed a concern that this regulation could be read to exclude from the application of section 721 a shift in partnership capital from the historic partners to the holder of the noncompensatory option in satisfaction of the partnership's option obligation upon exercise of the option. If this were the case, the partnership could be deemed to have sold a portion of each of its assets to the holder in a taxable exchange. Alternatively, the partnership could be deemed to have sold a partnership interest with a $0 basis to the option holder in a taxable exchange.

Despite these concerns, most commentators believe that § 1.721–1(b)(1) should not cause the issuance of a partnership interest upon exercise of a noncompensatory option to be taxable. They assert that the exercise of such an option should be nontaxable to the holder and the partnership, both under general tax principles applicable to noncompensatory options and under the policy of section 721 to facilitate business combinations through the pooling of capital.

Treasury and the IRS agree that, in general, the issuance of a partnership interest to the holder of a noncompensatory option should not be taxable to the holder or the partnership. Upon exercise, the option holder may be viewed as contributing property in the form of the premium, the exercise price, and the option privilege to the partnership in exchange for the partnership interest. Generally, this is a transaction to which section 721 should apply—a transaction through which persons join together in order to conduct a business or make investments. Accordingly, the proposed regulations generally provide that section 721 applies to the holder and the partnership upon the exercise of a noncompensatory option issued by the partnership.

The proposed regulations do not describe the tax consequences (to the partnership or the holder) of a right to convert partnership debt into an interest in the issuing partnership to the extent of any accrued but unpaid interest on the debt (including accrued original issue discount). On the one hand, based on *Carman* v. *Commissioner,* 189 F.2d 363 (2d Cir. 1951), it might be argued that the interest obligation is inseparable from the debt and that both are property for purposes of section 721. On the other hand, it may be appropriate to require a partnership to recognize gain to the extent of the accrued but unpaid interest, because the issuance of the partnership interest satisfies a deductible (or capital) expense of the partnership. As this issue is closely related to the tax treatment of the exercise of compensatory options, Treasury and the IRS have decided to consider this issue in the course of preparing guidance on compensatory options. Treasury and the IRS request comments on the proper treatment of the exercise of convertible debt to the extent of accrued, but unpaid, interest (including original issue discount) on the debt.

The proposed regulations also clarify that section 721 does not apply to the lapse of a noncompensatory option. If a noncompensatory option lapses, the former option holder does not contribute property to the partnership in exchange for an interest in the partnership. Accordingly, consistent with general tax principles, the lapse of a noncompensatory option generally results in the recognition of income by the partnership and the recognition of loss by the former option holder.

3. Accounting for Noncompensatory Options

The proposed regulations also contain rules to assist partnerships in properly accounting for any shifts in capital that may result from the exercise of noncompensatory options.

Generally, upon the exercise of a noncompensatory option, the option holder receives a partnership interest with a value that is greater or less than the aggregate value of the premium and exercise price that the option holder contributes to the partnership. In other words, the option privilege represents an asset with built-in gain or loss, *i.e.,* an asset to which section 704(c) would apply. However, because the option privilege terminates upon its contribution to the partnership, the partnership cannot allocate gain or loss from the option privilege to the option holder under section 704(c)(1)(A). To address this problem, the proposed regulations generally allow partnerships to substitute built-in gain or loss in the partnership's assets for the built-in gain or loss in the option.

The proposed regulations achieve this result by providing that a noncompensatory option holder's initial capital account is equal to the consideration paid to the partnership to acquire the noncompensatory option and the fair market value of any property (other than the option) contributed to the partnership on the exercise of the noncompensatory option. The proposed regulations then require the partnership to revalue its property immediately following the exercise of the noncompensatory option, when the holder has become a partner. Under the proposed regulations, the partnership must allocate the unrealized income, gain, loss, and deduction from this revaluation, first, to the noncompensatory option holder, to the extent necessary to reflect the holder's right to share in partnership capital under the partnership agreement, and, then, to the historic partners, to reflect the manner in which the unrealized income, gain, loss, or deduction in partnership property would be allocated among those partners if there were a taxable disposition of such property for its fair market value on that date. To the extent that unrealized appreciation or depreciation in the partnership's assets has been allocated to the capital account of the noncompensatory option holder, the holder will, under section 704(c)

principles, recognize any income or loss attributable to that appreciation or depreciation as the underlying assets are sold, depreciated, or amortized.

In some cases, the built-in gain or loss in the option will exceed the unrealized appreciation or depreciation in the partnership's assets (that has not been reflected in the partners' capital accounts previously). In those cases, even after all of the unrealized appreciation or depreciation in the partnership's assets has been allocated to the option holder, a disparity may remain between the noncompensatory option holder's right to share in partnership capital and the value of money and other property contributed by the partner. Most commentators have recommended and Treasury and the IRS agree that the partnership nevertheless should be allowed to shift capital between the historic partners an the noncompensatory option holder on the exercise of the noncompensatory option.

Some commentators also have suggested that the historic partners and the noncompensatory option holder should be allocated notional tax items over the recovery period for partnership assets similar to the remedial allocations that are permitted, but not required, under the regulations issued under section 704(c)(1)(A). Although the use of section 704(c) notional tax items would ensure that the noncompensatory option holder and the historic partners receive the proper amount of income and loss over time, Treasury and the IRS believe that implementing such a system would be unduly complex where the built-in gain or loss to be allocated to the noncompensatory option holder exceeds the built-in gain or loss in the partnership's assets.

Instead, the proposed regulations require that the partnership make corrective allocations of gross income or loss to the partners in the year in which the option is exercised so as to take into account any shift in the partners' capital accounts that occurs as a result of the exercise of a noncompensatory option. These corrective allocations are allocations of tax items that differ from the partnership's allocations of book items. If there are not sufficient actual partnership items in the year of exercise to conform the partnership's tax allocations to the capital shift, additional corrective allocations are required in succeeding taxable years until the capital shift has been fully taken into account.

The proposed regulations also provide rules for revaluing the partners' capital accounts while a noncompensatory option is outstanding. Section 1.704–1(b)(2)(iv) contains rules for maintaining a partnership's capital accounts. Section 1.704–1(b)(2)(iv)(*f*) provides that a partnership may, upon the occurrence of certain events (including the contribution of money to the partnership by a new or existing partner), increase or decrease the partners' capital accounts to reflect a revaluation of partnership property. If one or more options are outstanding when a revaluation occurs, and the revaluation does not account for the value associated with the outstanding options, the partners' capital accounts will not reflect the true economic value of their interests. For example, in partnerships with appreciated property, the historic partners' capital accounts often would overstate the distributions that would be made to the partners if the partnership were liquidated, because a portion of the partnership's assets may ultimately be paid to the option holder. Therefore, the proposed regulations modify § 1.704–1(b)(2)(iv)(*f*) and (h) to provide that any revaluation during the period in which there are outstanding noncompensatory options generally must take into account the fair market value, if any, of outstanding options.

4. Characterization Rule

Under section 704(b), a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined under the partnership agreement if the allocation under the agreement has substantial economic effect. If the allocation does not have substantial economic effect, or the partnership agreement does not provide for the allocation, then the allocation must be made in accordance with the partner's interest in the partnership (determined by taking into account all facts and circumstances). Section 1.704–1(b)(2)(ii)(*h*) provides in part that, for this purpose, the partnership agreement includes all agreements among the partners, or between one or more partners and the partnership, concerning affairs of the partnership and responsibilities of partners, whether oral or written, and whether or not embodied in a document referred to by the partners as the partnership agreement, including puts, options, and buy-sell agreements. Currently, there is some uncertainty about the extent to which these rules require a partnership to take into account a noncompensatory option to acquire an interest in a partnership when making its annual allocations.

Treasury and the IRS believe that it is appropriate to clarify these rules with respect to noncompensatory options addressed in this project. As these proposed regulations are limited to noncompensatory options, nothing in these proposed regulations provides any inference as to the operation of this rule for compensatory options or other types of agreements.

Given the uncertainty of the exercise of most noncompensatory options, Treasury and the IRS believe that noncompensatory options generally should not be treated as entitling the holder to a fixed right to share in partnership income until the option is exercised. However, if a noncompensatory option provides the holder with rights that are substantially similar to the rights afforded to a partner, then the holder should be treated as a partner and the option should be taken into account in allocating partnership income. At the same time, Treasury and the IRS recognize that treating a noncompensatory option holder as a partner may, in some circumstances, frustrate the intent of the parties without substantially altering their aggregate tax liabilities.

For these reasons, the proposed regulations generally respect noncompensatory options as such and do not characterize them as partnership equity. However, the proposed regulations contain a rule that characterizes the holder of a noncompensatory option as a partner if the option holder's rights are substantially similar to the rights afforded to a partner. This rule applies only if, as of the date that the noncompensatory option is issued, transferred, or modified, there is a strong likelihood that the failure to treat the option holder as a partner would result in a substantial reduction in the present value of the partners' and the option holder's aggregate tax liabilities.

The proposed regulations use a facts and circumstances test to determine whether a noncompensatory option holder's rights are substantially similar to the rights afforded to a partner, including whether the option is reasonably certain to be exercised and whether the option holder has partner attributes. The proposed regulations list a number of factors that are used to determine whether a noncompensatory option is reasonably certain to be exercised, including the premium paid for the option, the exercise price of the option, the term of the option, the predictability and stability of the value of the underlying partnership interest, and whether the partnership is expected to make distributions during the term of the option. If a noncompensatory option is reasonably certain to be exercised, then the holder of the option ordinarily

has rights that are substantially similar to the rights afforded to a partner. Partner attributes include the extent to which the option holder shares in the economic benefit and detriment of partnership income and loss and the extent to which the option holder has the right to participate in the management of the partnership.

If the holder of a noncompensatory option is treated as a partner under the proposed regulations, then the holder's distributive share of the partnership's income, gain, loss, deduction, or credit (or items thereof) generally must be determined in accordance with such partner's interest in the partnership (taking into account all facts and circumstances) as determined under § 1.704–1(b)(3). For this purpose, the partner's interest in the partnership generally must reflect the economic differences between holding an option to acquire a partnership interest and holding the partnership interest itself. For example, unlike a partner, a noncompensatory option holder is not required initially to contribute to the partnership the full amount of the purchase price for the partnership interest. Instead, the noncompensatory option holder generally pays an option premium that is considerably smaller than the purchase price and may wait until the option is about to expire to decide whether to exercise the option and pay the exercise price. The computation of the noncompensatory option holder's share of partnership items should reflect this lesser amount of capital investment to the extent appropriate in a particular case. In addition, a noncompensatory option holder's cumulative distributive share of partnership losses and deductions may be limited under sections 704(b) and (d) to the amount paid by the holder to the partnership for the option.

5. Original Issue Discount Provisions

The final regulations under the original issue discount (OID) provisions provide special rules for debt instruments convertible into the stock of the issuer. See §§ 1.1272–1(e), 1.1273–2(j), and 1.1275–4(a)(4). In response to Notice 2000–29, commentators requested that these special rules be extended to apply to debt instruments convertible into partnership interests. Treasury and the IRS agree with the commentators. Treating convertible debt issued by partnerships and corporations differently for purposes of these special rules could create unjustified distinctions between the taxation of instruments that are economically equivalent. Accordingly, the proposed regulations amend the OID provisions to treat partnership interests as stock for purposes of the special rules for convertible debt instruments.

Proposed Effective Date

These regulations are proposed to apply to noncompensatory options that are issued on or after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 20, 2003, beginning at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by April 29, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Audrey W. Ellis of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

2. Section 1.704–1 is amended as follows:

1. Paragraph (b)(0) is amended by adding entries for 1.704–1(b)(2)(iv)(*d*)(*4*), 1.704–1(b)(2)(iv)(*h*)(*1*), 1.704–1(b)(2)(iv)(*h*)(*2*), 1.704–1(b)(2)(iv)(*s*), 1.704–1(b)(4)(*ix*), and 1.704–1(b)(4)(x).

2. Paragraph (b)(1)(ii) is amended by adding a sentence at the end of the paragraph.

3. Paragraph (b)(2)(iv)(*d*)(*4*) is added.

4. Paragraph (b)(2)(iv)(*f*)(*1*) is revised.

5. Paragraphs (b)(2)(iv)(*h*)(*1*), and (*2*) are redesignated as paragraphs (b)(2)(iv)(*h*)(*1*)(*i*) and (*ii*), respectively; the text of paragraph (b)(2)(iv)(*h*) is redesignated paragraph (b)(2)(iv)(*h*)(*1*); a heading is added to new paragraph (b)(2)(iv)(*h*)(*1*); and paragraph (b)(2)(iv)(*h*)(*2*) is added.

6. Paragraph (b)(2)(iv)(*s*) is added immediately after the undesignated paragraph that follows paragraph (b)(2)(iv)(*r*)(*2*).

7. Paragraphs (b)(r)(ix) and (b)(4)(x) are added.

8. Paragraph (b)(5) is amended by adding *Example 20, Example 21, Example 22, Example 23, and Example 24.*

The additions and revisions read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

Exercise of noncompensatory options	1.704–1(b)(2)(iv)(*d*)(*4*)
* * * * * * *	
In general	1.704–1(b)(2)(iv)(*h*)(*1*)
Adjustments for noncompensatory options	1.704–(b)(2)(iv)(*h*)(*2*)
* * * * * * *	
Adjustments on the exercise of a noncompensatory option	1.704–1(b)(2)(iv)(*s*)
* * * * * * *	
Allocations with respect to noncompensatory options	1.704–1(b)(4)(ix)
Corrective allocations	1.704–1(b)(4)(x)
* * * * * * *	

(b) (0) * * *

(1) * * *

(ii) * * * In addition, paragraph (b)(2)(iv)(*d*)(*4*), paragraph (b)(2)(iv)(*h*)(*2*), paragraph (b)(2)(iv)(*s*), paragraph (b)(4)(ix), paragraph (b)(4)(x), and *Examples 20* through *24* in paragraph (b)(5) of this section apply to noncompensatory options (as defined in § 1.721–2(d)) that are issued on or after the date final regulations are published in the **Federal Register**.

* * * * *

(2) * * *

(iv) * * *

(*d*) * * *

(*4*) *Exercise of noncompensatory options.* For purposes of paragraph (b)(2)(iv)(*b*)(*2*) of this section, the fair market value of the property contributed on the exercise of a noncompensatory option (as defined in § 1.721–2(d)) does not include the fair market value of the option privilege, but does include the consideration paid to the partnership to acquire the option and the fair market value of any property (other than the option) contributed to the partnership on the exercise of the option. With respect to convertible equity, the fair market value of the property contributed to the partnership on the exercise of the option includes the converting partner's capital account immediately before the conversion. See *Examples 20* through *24* of paragraph (b)(5) of this section.

* * * * *

(*f*) * * *

(*1*) The adjustments are based on the fair market value of partnership property (taking section 7701(g) into account) on the date of adjustment, as determined under paragraph (b)(2)(iv)(*h*) of this section, reduced by the consideration paid to the partnership acquire any outstanding noncompensatory options (as defined in § 1.721–2(d)) that are issued on or after the date final regulations are published in the **Federal Register**. See *Example 22* of paragraph (b)(5) of this section.

* * * * *

(*h*) *Determinations of fair market value*—(1) *In general.* * * *

(2) *Adjustments for noncompensatory options.* The fair market value partnership property must be adjusted to account for any outstanding noncompensatory options (as defined in § 1.721–2(d)) at the time of a revaluation of partnership property under paragraph (b)(2)(iv(*f*) or (*s*) of this section. If the fair market value of outstanding noncompensatory options (as defined in § 1.721–2(d)) as of the date of the adjustment exceeds the consideration paid by the option holders to acquire the options, then the fair market value of partnership property must be reduced by that excess to the extent of the unrealized income or gain in partnership property (that has not been reflected in the capital accounts previously). This reduction is allocated only to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation. If the price paid by the option holders to acquire the outstanding noncompensatory options (as defined in § 1.721–2(d)) exceeds the fair market value of such options as of the date of the adjustment, then the value of partnership property must be increased by that excess to the extent of the unrealized deductions or loss in partnership property (that has not been reflected in the capital accounts previously). This increase is allocated only to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation.

* * * * *

(*s*) *Adjustments on the exercise of a noncompensatory option.* A partnership agreement may grant a partner, on the exercise of a noncompensatory option (as defined in § 1.721–2(d)), a right to share in partnership capital that exceeds (or is less than) the sum of the consideration paid by the partner to acquire and exercise such option. Where such an agreement exists, capital accounts will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless—

(*1*) In lieu of revaluing partnership property under paragraph (b)(2)(iv)(*f*) of this section immediately before the exercise of the option, the partnership revalues partnership property in accordance with the provisions of paragraphs (b)(2)(iv)(*f*)(*1*) through (*4*) of this section immediately after the exercise of the option;

(*2*) In determining the capital accounts of the partners (including the exercising partner) under paragraph (b)(2)(iv)(*s*)(*1*) of this section, the partnership first allocates any unrealized income, gain, loss, or deduction in partnership assets (that has not been reflected in the capital accounts previously) to the exercising partner to the extent necessary to reflect that partner's right to share in partnership capital under the partnership agreement, and then allocates any remaining unrealized income gain, loss, or deduction (that has not been reflected in the capital accounts previously) to the existing partners, to reflect the manner in which the unrealized income, gain, loss, or deduction in partnership property would be allocated among those partners if there were a taxable disposition of such property for its fair market value on that date;

(*3*) If, after making the allocations described in paragraph (b)(2)(iv)(*s*)(*2*) of this section, the exercising partner's capital account still does not reflect that partner's right to share in partnership capital under the partnership agreement, then the partnership reallocates partnership capital between the existing partners and the exercising partner so that the exercising partner's capital account does reflect the exercising partner's right to share in partnership capital under the partnership agreement (a capital account reallocation). Any increase or reduction in the capital accounts of existing partners that occurs as a result of a capital account reallocation under this paragraph (b)(2)(iv)(*s*)(*3*) must be allocated among the existing partners in accordance with the principles of this section; and

(*4*) The partnership agreement requires corrective allocations so as to take into account all capital account reallocations made under paragraph (b)(2)(iv)(s)(3) of this section (see paragraph (b)(4)(x) of this section). See *Examples 20* through *24* of paragraph (b)(5) of this section.

* * * * *

(4) * * *

(ix) *Allocations with respect to noncompensatory options.* A partnership agreement may grant to a partner that exercises a noncompensatory option a right to share in partnership capital that exceeds (or is less than) the sum of the amounts paid by the partner to acquire and exercise such option. In such a case, allocations of income, gain, loss, and deduction to the partners while the noncompensatory option is outstanding cannot have economic effect, because, if the noncompensatory option is exercised, the exercising partner, rather than the existing partners, may receive the economic benefit or bear the economic detriment associated with that income, gain, loss, or deduction. Allocations of partnership income, gain, loss, and deduction to the partners while the noncompensatory option is outstanding will be deemed to be in accordance with the partners' interests in the partnership only if—

(*a*) The holder of the noncompensatory option is not treated as a partner under § 1.761–3;

(*b*) The partnership agreement requires that, on the exercise of the noncompensatory option, the partnership comply with the rules of paragraph (b)(2)(iv)(*s*) of this section; and

(*c*) All material allocations and capital account adjustments under the partnership agreement not pertaining to noncompensatory options are recognized under section 704(b). See *Examples 20* through *24* of paragraph (b)(5) of this section.

(x) *Corrective allocations.* If partnership capital is reallocated between existing partners and a partner exercising a noncompensatory option under paragraph (b)(2)(iv)(*s*)(*3*) of this section (a capital account reallocation), the partnership must, beginning with the taxable year of the exercise and in all succeeding taxable years until the allocations required are fully taken into account, make corrective allocations so as to take into account the capital account reallocation. A corrective allocation is an allocation (consisting of a pro rata portion of each item) for tax purposes of gross income and gain, or gross loss and deduction, that differs from the partnership's allocation of the corresponding book item. See *Example 21* of paragraph (b)(5) of this section.

* * * * *

(5) * * *

Example 20. (i) In Year 1, TM and PK each contribute cash of $10,000 to LLC, a newly formed limited liability company, classified as a partnership for Federal tax purposes, in exchange for 100 units in LLC. Under the LLC agreement, each unit is entitled to participate equally in the profits and losses of LLC. LLC uses the cash contributions to purchase a non-depreciable property, Property A, for $20,000. Also in Year 1, at a time when Property A is still valued at $20,000, LLC issues an option to DH. The option allows DH to buy 100 units in LLC for an exercise price of $15,000 in Year 2. DH pays $1,000 to the LLC for the issuance of the option. Assume that the LLC agreement requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section, and that all material allocations and capital account adjustments under the LLC agreement not pertaining to noncompensatory options are recognized under section 704(b). Also assume that DH's option is a noncompensatory option under § 1.721–2(d), and that DH is not treated as a partner with respect to the option. In Year 2, DH exercises the option, contributing the $15,000 exercise price to the partnership. At the time the option is exercised, the value of Property A is $35,000.

	Basis	Value
Assets:		
Property A	$20,000	$35,000
Cash Premium	1,000	1,000
Exercise Price	15,000	15,000
Total	36,000	51,000
Liabilities and Capital:		
TM	10,000	17,000
PK	10,000	17,000
DH	16,000	17,000
Total	36,000	51,000

(ii) Under paragraphs (b)(2)(iv)(*b*)(*2*) and (b)(2)(iv)(*d*)(*4*) of this section, DH's capital account is credited with the amount paid for the option ($1,000) and the exercise price of the option ($15,000). Under the LLC agreement, however, DH is entitled to LLC capital corresponding to 100 units of LLC (⅓ of LLC's capital). Immediately after the exercise of the option, LLC's assets are cash of $16,000 ($1,000 premium and $15,000 exercise price contributed by DH) and Property A, which has a value of $35,000. Thus, the total value of LLC's assets is $51,000. DH is entitled to LLC capital equal to ⅓ of this value, or $17,000. As DH is entitled to $1,000 more LLC capital than DH's capital contributions to LLC, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

(iii) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase DH's capital account from $16,000 to $17,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section and allocating the first $1,000 of book gain to DH. The net gain in LLC's assets (Property A) is $15,000 ($35,000 value less $20,000 basis). The first $1,000 of this gain must be allocated to DH, and the remaining $14,000 of this gain is allocated equally to TM and PK in accordance with the LLC agreement. Because the revaluation of LLC assets under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases DH's capital account to the amount agreed on by the members, LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from the revalued property must be allocated in accordance with section 704(c) principles.

	TM		PK		DH	
	Tax	Book	Tax	Book	Tax	Book
Capital account after exercise	$10,000	$10,000	$10,000	$10,000	$16,000	$16,000
Revaluation amount	.....	7,000	.....	7,000	.....	1,000
Capital account after revaluation	10,000	17,000	10,000	17,000	16,000	17,000

Example 21. (i) Assume the same facts as in *Example 20*, except that, in Year 1, LLC sells Property A for $40,000, recognizing gain of $20,000. LLC does not distribute the sale proceeds to its partners and it has no other earnings in Year 1. With the proceeds ($40,000), LLC purchases Property B, a nondepreciable property. Also assume that DH exercises the noncompensatory option at the beginning of Year 2 and that, at the time DH exercises the option, the value of Property B is $41,000. In Year 2, LLC has gross income of $3,000 and deductions of $1,500.

	Basis	Value
Assets:		
Property B	$40,000	$41,000
Cash	16,000	16,000
Total	56,000	57,000
Liabilities and Capital:		
TM	20,000	19,000
PK	20,000	19,000
DH	16,000	19,000

(ii) Under paragraphs (b)(2)(iv)(*b*)(*2*) and (b)(2)(iv)(*d*)(*4*) of this section, DH's capital account is credited with the amount paid for the option ($1,000) and the exercise price of the option ($15,000). Under the LLC agreement, however, DH is entitled to LLC capital corresponding to 100 units of LLC (⅓ of LLC's capital). Immediately after the exercise of the option, LLC's assets are $16,000 cash ($1,000 option premium and $15,000 exercise price contributed by DH) and Property B, which has a value of $41,000. Thus, the total value of LLC's assets is $57,000. DH is entitled to LLC capital equal to ⅓ of this amount, or $19,000. As DH is entitled to $3,000 more LLC capital than DH's capital contributions to LLC, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

(iii) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase DH's capital account from $16,000 to $19,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section, and allocating the $1,000 of book gain from the revaluation to DH. This brings DH's capital account to $17,000. Second, under paragraph (b)(2)(iv)(*s*)(*3*) of this section, LLC must reallocate $2,000 of capital from the existing partners (TM and PK) to DH to bring DH's capital account to $19,000 (the capital account reallocation). As TM and PK share equally in all items of income, gain, loss, and deduction of LLC, each member's capital account is reduced by ½ of the $2,000 reduction ($1,000).

(iv) Under paragraph (b)(2)(iv)(*s*)(*4*) of this section, beginning in the year in which the option is exercised, LLC must make corrective allocations so as to take into account the capital account reallocation. In Year 2, LLC has gross income of $3,000 and deductions of $1,500. The book gross income of $3,000 is shared equally by TM, PK, and DH. For tax purposes, however, LLC must allocate all of its gross income ($3,000) to DH. LLC's deductions ($1,500) must be allocated equally among TM, PK, and DH. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from Property B must be allocated in accordance with section 704(c) principles.

	Basis	Value
Total	56,000	57,000

	TM		PK		DH	
	Tax	Book	Tax	Book	Tax	Book
Capital account after exercise	$20,000	$20,000	$20,000	$20,000	$16,000	$16,000
Revaluation						1,000
Capital account after revaluation	20,000	20,000	20,000	20,000	16,000	17,000
Capital account reallocation		(1,000)		(1,000)		2,000
Capital account after capital account reallocation	20,000	19,000	20,000	19,000	16,000	19,000
Income allocation (Yr. 2)		1,000		1,000	3,000	1,000
Deduction allocation (Yr. 2)	(500)	(500)	(500)	(500)	(500)	(500)
Capital account at end of year 2	19,500	19,500	19,500	19,500	18,500	19,500

Example 22. (i) In Year 1, AC and NE each contribute cash of $10,000 to LLC, a newly formed limited liability company classified as a partnership for Federal tax purposes, in exchange for 100 units in LLC. Under the LLC agreement, each unit is entitled to participate equally in the profits and losses of LLC. LLC uses the cash contributions to purchase two non-depreciable properties, Property A and Property B, for $10,000 each. Also in Year 1, at a time when Property A and Property B are still valued at $10,000 each, LLC issues an option to DR. The option allows DR to buy 100 units in LLC for an exercise price of $15,000 in Year 2. DR pays $1,000 to LLC for the issuance of the option. Assume that the LLC agreement requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section, and that all material allocations and capital account adjustments under the LLC agreement not pertaining to noncompensatory options are recognized under section 704(b). Also assume that DR's option is a noncompensatory option under § 1.721–2(d), and that DR is not treated as a partner with respect to the option.

(ii) Prior to the exercise of DR's option, ML contributes $17,000 to LLC for 100 units in LLC. At the time of ML's contribution, Property A has a value of $30,000 and a basis of $10,000, Property B has a value of $5,000 and a basis of $10,000, and the fair market value of DR's option is $2,000.

(iii) Upon ML's admission to the partnership, the capital accounts of AC and NE (which were $10,000 each prior to ML's admission) are, in accordance with paragraph (b)(2)(iv)(*f*) of this section, adjusted upward to reflect their shares of the unrealized appreciation in the partnership's assets. Under paragraph (b)(2)(iv)(*f*)(*1*) of this section, those adjustments must be based on the fair market value of LLC property (taking section 7701(g) into account) on the date of the adjustment. The fair market value of partnership property ($36,000) must be reduced by the consideration paid by DR to the partnership to acquire the option ($1,000) (under paragraph (b)(2)(iv)(*f*)(*1*) of this section), and the excess of the fair market value of the option as of the date of the adjustment over the consideration paid by DR to acquire the option ($1,000) (under paragraph (b)(2)(iv)(*h*)(*2*) of this section), but only to the extent of the unrealized appreciation in LLC property ($15,000). Therefore, the revaluation adjustments must be based on a value of $34,000. Accordingly, AC and NE's capital accounts must be increased to $17,000. This $1,000 reduction is allocated entirely to Property A, the only asset having unrealized appreciation. Therefore, the book value of Property A is $29,000. The $19,000 of built-in gain in Property A and the $5,000 of built-in loss in Property B must be allocated equally between AC and NE in accordance with section 704(c) principles.

	Assets basis	Value	Option adjustment	1704(c) book
Property A	$10,000	$30,000	($1,000)	$29,000
Property B	10,000	5,000	0	5,000

	Assets basis	Value	Option adjustment	1704(c) book
Cash	1,000	1,000	0	1,000
Subtotal	21,000	36,000	(1,000)	35,000
Cash contributed by ML	17,000	17,000	0	17,000
Total	38,000	53,000	(1,000)	52,000

	Liabilities and Capital	
	Tax	Value
AC	$10,000	$17,000
NE	10,000	17,000
ML	17,000	17,000
Option	1,000	2,000
Total	38,000	53,000

(iv) After the admission of ML, when Property A still has a value of $30,000 and a basis of $10,000 and Property B still has a value of $5,000 and a basis of $10,000, DR exercises the option. On the exercise of the option, DR's capital account is credited with the amount paid for the option ($1,000) and the exercise price of the option ($15,000). Under the LLC agreement, however, DR is entitled to LLC capital corresponding to 100 units of LLC (¼ of LLC's capital). Immediately after the exercise of the option, LLC's assets are worth $68,000 ($15,000 contributed by DR, plus the value of LLC assets prior to the exercise of the option, $53,000). DR is entitled to LLC capital equal to ¼ of this value, or $17,000. As DR is entitled to $1,000 more LLC capital than DR's capital contributions to LLC, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

(v) Under paragraph (b)(2)(iv)(*s*) of this section, the LLC must increase DR's capital account from $16,000 to $17,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section and allocating the first $1,000 of book gain to DR. The net increase in the value of LLC properties since the previous revaluation is $1,000 (the difference between the actual value of Property A, $30,000, and the book value of Property A, $29,000). The entire $1,000 of book gain is allocated to DR. Because the revaluation of LLC assets under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases DR's capital account to the amount agreed on by the members, the LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from Properties A and B must be allocated in accordance with section 704(c) principles.

	AC		NE		ML		DR	
	Book	Tax	Tax	Book	Tax	Book	Tax	Book
Capital account after admission of ML	$10,000	$17,000	$10,000	$17,000	$17,000	$17,000	.....	.....
Capital account after exercise of DH's option	10,000	17,000	10,000	17,000	17,000	17,000	$16,000	$16,000
Revaluation	.....	.....	.....	.....	.....	.....	.....	1,000
Capital account after revaluation	10,000	17,000	10,000	17,000	17,000	17,000	16,000	17,000

Example 23. (i) On the first day of Year 1, MS, VH, and SR form LLC, a limited liability company classified as a partnership for Federal tax purposes. MS and VH each contribute $10,000 cash to LLC for 100 units of common interest in LLC. SR contributes $10,000 cash for a convertible preferred interest in LLC. SR's convertible preferred interest entitles SR to receive an annual allocation and distribution of cumulative LLC net profits in an amount equal to 10 percent of SR's unreturned capital. SR's convertible preferred interest also entitles SR to convert, in year 3, SR's preferred interest into 100 units of common interest. If SR converts, SR has the right to the same share of LLC capital as SR would have had if SR had held the 100 units of common interest since the formation of LLC. Under the LLC agreement, each unit of common interest has an equal right to share in any LLC net profits that remains after payment of the preferred return. Assume that the LLC agreement requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section, and that all material allocations and capital account adjustments under the LLC agreement not pertaining to noncompensatory options are recognized under section 704(b). Also assume that SR's right to convert the preferred interest into a common interest qualifies as a noncompensatory option under § 1.721–2(d), and that, prior to the exercise of the conversion right, SR is not treated as a partner with respect to the conversion right.

(ii) LLC uses the $30,000 to purchase Property Z, a property that is depreciable on a straight-line basis over 15 years. In each of Years 1 and 2, LLC has net income of $2,500, comprised of $4,500 of gross receipts and $2,000 of depreciation. It allocates and distributes $1,000 of this net income to SR in each year. LLC allocates, but does not distribute, the remaining $1,500 of net income equally to MS and VH in each year.

	MS		VH		SR	
	Tax	Book	Tax	Book	Tax	Book
Capital account upon formation	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
Allocation of income Years 1 and 2	1,500	1,500	1,500	1,500	2,000	2,000
Distributions Years 1 and 2	.....	.....	.....	.....	(2,000)	(2,000)
Capital account end of Year 2	11,500	11,500	11,500	11,500	10,000	10,000

(iii) At the beginning of Year 3, when Property Z has a value of $38,000 and a basis of $26,000 ($30,000 original basis less $4,000 of depreciation) and LLC has accumulated undistributed cash of $7,000 ($9,000 gross receipts less $2,000 distributions), SR converts SR's preferred interest into a common interest. Under paragraphs (b)(2)(iv)(*b*)(*2*) and (b)(2)(iv)(*d*)(*4*) of this section, SR's capital account after the conversion equals SR's capital account before the conversion, $10,000. On the conversion of the preferred interest, however, SR is entitled to LLC capital corresponding to 100 units of common interest in LLC (⅓ of LLC's capital). At the time of the conversion, the total value of LLC assets is $45,000. SR is entitled to LLC capital equal to ⅓ of this

value, or $15,000. As SR is entitled to $5,000 more LLC capital than SR's capital account immediately after the conversion, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

	Basis	Value
Assets:		
Property Z Undistributed Income	$26,000	$38,000
	7,000	7,000
Total	33,000	45,000

	Basis	Value
Liabilities and Capital:		
MS	11,500	15,000
VH	11,500	15,000
SR	10,000	15,000
Total	33,000	45,000

(iv) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase SR's capital account from $10,000 to $15,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section, and allocating the first $5,000 of book gain from that revaluation to SR. The net unrealized gain in LLC's assets (Property Z) is $12,000 ($38,000 value less $26,000 basis). The first $5,000 of this gain must be allocated to SR. The remaining $7,000 of that gain must be allocated equally to MS and VH in accordance with the LLC agreement. Because the revaluation of LLC assets under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases SR's capital account to the amount agreed on by the members, LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from the revalued property must be allocated in accordance with section 704(c) principles.

	MS		VH		SR	
	Tax	Book	Tax	Book	Tax	Book
Capital account prior to conversion	$11,500	$11,500	$11,500	$11,500	$10,000	$10,000
Revaluation on conversion	.....	3,500	.....	3,500	.....	5,000
Capital account after conversion	11,500	15,000	11,500	15,000	10,000	15,000

Example 24. (i) On the first day of Year 1, AK and JP each contribute cash of $10,000 to LLC, a newly formed limited liability company classified as a partnership for Federal tax purposes, in exchange for 100 units in LLC. Immediately after its formation, LLC borrows $10,000 from JS. Under the terms of the debt instrument, interest of $1,000 is payable annually and principal is repayable in five years. Throughout the term of the indebtedness, JS has the right to convert the debt instrument into 100 units in LLC. If JS converts, JS has the right to the same share of LLC capital as JS would have had if JS had held 100 units in LLC since the formation of LLC. Under the LLC agreement, each unit participates equally in the profits and losses of LLC and has an equal right to share in LLC capital. Assume that the LLC agreement requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section, and that all material allocations and capital account adjustments not pertaining to noncompensatory options are recognized under section 704(b). Also assume that JS's right to convert the debt into an interest in LLC qualifies as a noncompensatory option under § 1.721–2(d), and that, prior to the exercise of the conversion right, JS is not treated as a partner with respect to the convertible debt.

(ii) LLC uses the $30,000 to purchase Property D, property that is depreciable on a straight-line basis over 15 years. In each of Years 1, 2, and 3, LLC has net income of $2,000, comprised of $5,000 of gross receipts, $2,000 of depreciation, and interest expense (representing payments of interest on the loan from JS) of $1,000. LLC allocates, but does not distribute, this income equally to AK and JP.

	AK		JP		JS	
	Tax	Book	Tax	Book	Tax	Book
Initial capital account	$10,000	10,000	$10,000	10,000	.....	.....
Year 1 net income	$1,000	1,000	$1,000	1,000	.....	.....
Years 2 net income	$1,000	1,000	$1,000	1,000	.....	.....
Years 3 net income	$1,000	1,000	$1,000	1,000	.....	.....
Year 4 initial capital account	$13,000	13,000	$13,000	13,000	0	0

(iii) At the beginning of year 4, at a time when Property D, the LLC's only asset, has a value of $33,000 and basis of $24,000 ($30,000 original basis less $6,000 depreciation in Years 1 through 3), and LLC has accumulated undistributed cash of $12,000 ($15,000 gross receipts less $3,000 of interest payments) in LLC, JS converts the debt into a 1/3 interest in LLC. Under paragraphs (b)(2)(iv)(*b*)(*2*) and (b)(2)(iv)(*d*)(*4*) of this section, JS's capital account after the conversion is the adjusted basis of the debt immediately before JS's conversion of the debt, $10,000, plus any accrued but unpaid qualified stated interest on the debt, $0. On the conversion of the debt, however, JS is entitled to receive LLC capital corresponding to 100 units of LLC (1/3 of LLC's capital). At the time of the conversion, the total value of LLC's assets is $45,000. JS is entitled to LLC capital equal to 1/3 of this value, or $15,000. As JS is entitled to $5,000 more LLC capital than JS's capital contribution to LLC ($10,000), the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

	Basis	Value
Assets:		
Property D	$24,000	$33,000
Cash	12,000	12,000
Total	36,000	45,000
Liabilities and Capital:		
AK	13,000	15,000
JP	13,000	15,000
JS	10,000	15,000
Total	36,000	45,000

(iv) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase JS's capital account from $10,000 to $15,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section, and allocating the first $5,000 of book gain from that revaluation to JS. The net unrealized gain in LLC's assets (Property D) is $9,000 ($33,000 value less $24,000 basis). The first $5,000 of this gain must be allocated to JS, and the remaining $4,000 of that gain must be allocated equally to AK and JP in accordance with the LLC agreement. Because the revaluation of LLC assets under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases JS's capital account to the amount agreed upon by the members, LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from the revalued property must be allocated in accordance with section 704(c) principles.

	AK		JP		JS	
	Tax	Book	Tax	Book	Tax	Book
Year 4 capital account prior to exercise	$13,000	$13,000	$13,000	$13,000	0	0
Capital account after exercise	13,000	13,000	13,000	13,000	10,000	10,000
Revaluation	.....	2,000	.....	2,000	.....	5,000
Capital account after revaluation	13,000	15,000	13,000	15,000	10,000	15,000

3. Section 1.704–3 is amended by revising the first sentence of paragraph (a)(6)(i) to read as follows:

§ 1.704–3 Contributed property.

(a) * * *

(6) *Other applications of section 704(c) principles*—(*i*) *Revaluations under section 704(b).* The principles of this section apply to allocations with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to § 1.704–1(b)(2)(iv)(*f*) or 1.704–1(b)(2)(iv)(*s*) (reverse section 704(c) allocations).

* * *

* * * * *

4. Section 1.721–2 is added to read as follows:

§ 1.721–2 Noncompensatory options.

(a) *Exercise of a noncompensatory option.* Notwithstanding § 1.721–1(b)(1), section 721 applies to the exercise (as defined in paragraph (e)(4) of this section) of a noncompensatory option (as defined in paragraph (d) of this section). However, if the exercise price (as defined in paragraph (e)(5) of this section) of a noncompensatory option exceeds the capital account received by the option holder on the exercise of the noncompensatory option, the transaction will be given tax effect in accordance with its true nature.

(b) *Transfer of property in exchange for a noncompensatory option.* Section 721 does not apply to a transfer of property to a partnership in exchange for a noncompensatory option. For example, if a person purchases a noncompensatory option with appreciated property, the person recognizes income or gain to the extent that the fair market value of the noncompensatory option exceeds the person's basis in the surrendered property.

(c) *Lapse of a noncompensatory option.* Section 721 does not apply to the lapse of a noncompensatory option.

(d) *Scope.* The provisions of this section apply only to noncompensatory options and do not apply to any interest on convertible debt that has been accrued by the partnership (including accrued original issue discount). For purposes of this section, the term noncompensatory option means an option (as defined in paragraph (e)(1) of this section) issued by a partnership (the issuing partnership), other than an option issued in connection with the performance of services.

(e) *Definitions.* The following definitions apply for the purposes of this section.

(1) *Option* means a call option or warrant to acquire an interest in the issuing partnership, the conversion feature of convertible debt (as defined in paragraph (e)(2) of this section), or the conversion feature of convertible equity (as defined in paragraph (e)(3) of this section). A contract that otherwise constitutes an option shall not fail to be treated as such for purposes of this section merely because it may or must be settled in cash or property other than a partnership interest.

(2) *Convertible debt* is any indebtedness of a partnership that is convertible into an interest in that partnership.

(3) *Convertible equity* is preferred equity in a partnership that is convertible into common equity in that partnership. For this purpose, preferred equity is any interest in the issuing partnership that entitles the partner to a preferential return on capital and common equity is any interest in the issuing partnership that is not preferred equity.

(4) *Exercise* means the exercise of an option or warrant or the conversion of convertible debt or convertible equity.

(5) *Exercise price* means, in the case of a call option or warrant, the exercise price of the call option or warrant; in the case of convertible equity, the converting partner's capital account with respect to that convertible equity, increased by the fair market value of cash or other property contributed to the partnership in connection with the conversion; and, in the case of convertible debt, the adjusted issue price (within the meaning of § 1.1275–1(b)) of the debt converted, increased by accrued but unpaid qualified stated interest and by the fair market value of cash or other property contributed to the partnership in connection with the conversion.

(f) *Example.* The following example illustrates the provisions of this section:

Example. In Year 1, L and M form general partnership LM with cash contributions of $5,000 each, which are used to purchase land, Property D, for $10,000. In that same year, the partnership issues an option to N to buy a one-third interest in the partnership at any time before the end of Year 3. The exercise price of the option is $5,000, payable in either cash or property. N transfers Property E with a basis of $600 and a value of $1,000 to the partnership in exchange for the option. N provides no other consideration for the option. Assume that N's option is a noncompensatory option under paragraph (d) of this section and that N is not treated as a partner with respect to the option. Under paragraph (b) of this section, section 721(a) does not apply to N's transfer of Property E to LM in exchange for the option. In accordance with § 1.1001–2, upon N's transfer of Property E to the partnership in exchange for the option, N recognizes $400 of gain. Under open transaction principles applicable to noncompensatory options, the partnership does not recognize any gain upon receipt of appreciated property in exchange for the option. The partnership has a basis of $1,000 in Property E. In Year 3, when the partnership property is valued at $16,000, N exercises the option, contributing Property F with a basis of $3,000 and a fair market value of $5,000 to the partnership. Under paragraph (a) of this section, neither the partnership nor N recognizes gain upon N's contribution of property to the partnership upon the exercise of the option. Under section 723, the partnership has a basis of $3,000 in Property F. See § 1.704–1(b)(2)(iv)(*d*)(*4*) and (*s*) for special rules applicable to capital account adjustments on the exercise of a noncompensatory option.

(g) *Effective Date.* This section applies to noncompensatory options that are issued on or after the date final regulations are published in the **Federal Register**.

5. Section 1.761–3 is added to read as follows.

§ 1.761–3 Certain option holders treated as partners.

(a) *In general.* A noncompensatory option (as defined in paragraph (b) of this section) is treated as a partnership interest if the option (and any rights associated with it) provides the holder with rights that are substantially similar to the rights afforded to a partner. This paragraph applies only if, as of the date that the noncompensatory option is

issued, transferred, or modified, there is a strong likelihood that the failure to treat the holder of the noncompensatory option as a partner would result in a substantial reduction in the present value of the partners' and the holder's aggregate tax liabilities. If the holder of a noncompensatory option is treated as a partner under this section, such partner's distributive share of the partnership's income, gain, loss, deduction or credit (or items thereof) is determined in accordance with that partner's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704–1(b)(3).

(b) *Definitions*—(1) *Noncompensatory option.* For purposes of this section, a noncompensatory option means an option (as defined in paragraph (b)(2) of this section) issued by a partnership, other than an option issued in connection with the performance of services. A noncompensatory option issued by an eligible entity (as defined in § 301.7701–3(a)) that would become a partnership under § 301.7701–3(f)(2) of this chapter if the option holder were treated as a partner under this section is also a noncompensatory option for purposes of this section. If a noncompensatory option is issued by such an eligible entity, then the eligible entity is treated as a partnership for purposes of applying this section.

(2) *Option.* For purposes of this section, a call option or warrant to acquire an interest in the issuing partnership is an option. In addition, convertible debt (as defined in § 1.721–2(e)(2)) and convertible equity (as defined in § 1.721–2(e)(3)) are options for purposes of this section. A contract that otherwise constitutes an option shall not fail to be treated as such for purposes of this section merely because it may or must be settled in cash or property other than a partnership interest.

(c) *Rights taken into account.* (1) In determining whether a noncompensatory option provides the holder with rights that are substantially similar to the rights afforded to a partner, all facts and circumstances are considered, including whether the option is reasonably certain to be exercised (as of the time that the option is issued, transferred or modified) and whether the option holder possesses partner attributes. For purposes of this section, if a noncompensatory option is reasonably certain to be exercised, then the holder of the option ordinarily has rights that are substantially similar to the rights afforded to a partner.

(2) *Reasonable certainty of exercise.* The following factors are relevant in determining whether a noncompensatory option is reasonably certain to be exercised (as of the time that the noncompensatory option is issued, transferred, or modified)—

(i) The fair market value of the partnership interest that is the subject of the option;

(ii) The exercise price of the option;

(iii) The term of the option;

(iv) The volatility, or riskiness, of the partnership interest that is the subject of the option;

(v) The fact that the option premium and, if the option is exercised, the option exercise price, will become assets of the partnership;

(vi) Anticipated distributions by the partnership during the term of the option;

(vii) Any other special option features, such as an exercise price that declines over time or declines contingent on the happening of specific events;

(viii) The existence of related options, including reciprocal options; and

(ix) Any other arrangements (express or implied) affecting the likelihood that the option will be exercised.

(3) *Partner attributes.* Partner attributes include the extent to which the holder of the option will share in the economic benefit of partnership profits (including distributed profits) and in the economic detriment associated with partnership losses. Partner attributes also include the existence of any arrangement (either within the option agreement or in a related agreement) that, directly or indirectly, allows the holder of a noncompensatory option to control or restrict the activities of the partnership. For this purpose, rights in the partnership possessed by the option holder solely by virtue of owning a partnership interest and not by virtue of holding a noncompensatory option are not taken into account, provided that those rights are no greater than rights granted to other partners owning similar interests in the partnership.

(d) *Examples.* The following examples illustrate the provisions of this section. For the following examples, assume that:

(1) Each option agreement provides that the partnership cannot make distributions to its partners while the option remains outstanding; and

(2) The option holders do not have any significant rights to control or restrict the activities of the partnership (other than restricting distributions and dilutive issuances of partnership equity).

Example 1. Active trade or business. PRS is a partnership engaged in a telecommunications business. In exchange for a premium of $8x, PRS issues a noncompensatory option to A to acquire a 10 percent interest in PRS for $17x at any time during a 7-year period commencing on the date on which the option is issued. At the time of the issuance of the option, a 10 percent interest in PRS has a fair market value of $16x. Due to the riskiness of PRS's business, the value of a 10 percent PRS interest in 7 years is not reasonably predictable as of the time the option is issued. Therefore, it is not reasonably certain that A's option will be exercised. Furthermore, although the option provides A with substantially the same economic benefit of partnership profits as would a direct investment in PRS, A does not share in substantially the same economic detriment of partnership losses as would a partner in PRS. Given these facts, the option to acquire a PRS interest does not provide A with rights that are substantially similar to the rights afforded to a partner. Therefore, A is not treated as a partner under this section.

Example 2. Option issued by partnership with reasonably predictable earnings. PRS owns rental real property. The property is 95 percent rented to corporate tenants with a mid-investment grade bond rating or better and is expected to remain so for the next 20 years. The tenants of the building are responsible for paying all real estate taxes, insurance, and maintenance expenses relating to the property. Occupancy rates in properties of a similar character are high in the geographic area in which the property is located, and it is reasonably predictable that properties in that area will retain their value during the next 10 years. In exchange for a premium of $6.5x, PRS issues a noncompensatory option to B to acquire a 10 percent interest in PRS for $17x at the end of a 7-year period commencing on the date of the issuance of the option. At the time the option is issued, a 10 percent interest in PRS has a fair market value of $16.5x. Given the stability of PRS's rental property, PRS can reasonably predict that its net cash flow for each of the 7 years during which the option is outstanding will be $10x ($70x over the 7 years), and that there will be no decline in the value of the property during that time. In light of the reasonably predictable earnings of PRS and the fact that PRS will make no distributions to its partners during the 7 years that the option is outstanding, it is reasonably certain that the value of a 10 percent interest in PRS at the end of the option's 7-year term will significantly exceed the exercise price of the option. Therefore, the option is reasonably certain to be exercised. Because the option is reasonably certain to be exercised, under these facts, B has rights that are substantially similar to the rights afforded to a partner. Therefore, if there is a strong likelihood that failure to treat B as a partner would result in a substantial reduction in the partners' and B's aggregate tax liabilities, B will be treated as a partner. In such a case, B's distributive share of PRS's income, gain, loss, deduction, or credit (or items thereof) is determined in accordance with B's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704–1(b)(3).

Example 3. Deep in the money options. (i) LP is a limited partnership engaged in an internet start-up venture. In exchange for a premium of $14x, LP issues a noncompensatory option to C to acquire a 5 percent interest in LP for $6x at any time during a 10-year period commencing on the date on which the option is issued. At the time of the issuance of the option, a 5 percent interest in LP has a fair market value of $15x. Because of the riskiness of LP's business, the option is not reasonably certain to be exercised. Nevertheless, because C has paid a $14x premium for a partnership interest that has a fair market value of $15x, C has substantially the same economic benefits and detriments as a result of purchasing the option as C would have had if C had purchased a partnership interest. Therefore, the option provides C with rights that are substantially similar to the rights afforded to a partner (partner attributes). See paragraph (c)(3) of this section. If there is a strong likelihood that failure to treat C as a partner would result in a substantial reduction in the partners' and C's aggregate tax liabilities, C will be treated as a partner. In such a case, C's distributive share of LP's income, gain, loss, deduction, or credit (or items thereof) is determined in accordance with C's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704–1(b)(3).

(ii) The facts are the same as in paragraph (i) of this Example 3, except that C transfers $150x to LP in exchange for a note from LP that matures 10 years from the date of issuance and a warrant to acquire a 5 percent interest in LP for an exercise price of $6x. The warrant issued with the debt is exercisable at any time during the 10-year term of the debt. The debt instrument and the warrant comprise an investment unit with the meaning of section 1273(c)(2). Under § 1.1273–2(h), the issue price of the investment unit, $150x, is allocated $136x to the debt instrument and $14x to the warrant. As in paragraph (i), C has substantially the same economic benefits and detriments as a result of purchasing the warrant as C would have had if C had purchased a partnership interest. Therefore, the warrant provides C with rights that are substantially similar to the rights afforded to a partner. If there is a strong likelihood that failure to treat C as a partner would result in a substantial reduction in the partners' and C's aggregate tax liabilities, then C will be treated as a partner. In such a case, C's distributive share of LP's income, gain, loss, deduction, or credit (or items thereof) is determined in accordance with C's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704–1(b)(3).

(e) *Effective Date.* This section applies to noncompensatory options that are issued on or after the date final regulations are published in the **Federal Register**.

6. Section 1.1272–1 is amended by adding a sentence at the end of paragraph (e) to read as follows:

§ 1.1272–1 Current inclusion of OID in income.

* * * * *

(e) * * * For debt instruments issued on or after the date final regulations are published in the **Federal Register**, the term *stock* in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

* * * * *

7. Section 1.1273–2 is amended by adding a sentence at the end of paragraph (j) to read as follows:

§ 1.1273–2 Determination of issue price and issue date.

* * * * *

(j) * * * For debt instruments issued on or after the date final regulations are published in the **Federal Register**, the term *stock* in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

* * * * *

8. Section 1.1275–4 is amended by adding a sentence at the end of paragraph (a)(4) to read as follows:

§ 1.1275–4 Contingent payment debt instruments.

(a) * * *

(4) * * * For debt instruments issued on or after the date final regulations are published in the **Federal Register**, the term stock in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–872 Filed 1–21–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 18

RIN 1219–AA98 (Phase 10)

Alternate Locking Devices for Plug and Receptacle-Type Connectors on Mobile Battery-Powered Machines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: MSHA is proposing to amend the existing regulation by allowing the optional use of alternative locking devices for plugs and receptacles to secure battery plugs to receptacles. The proposed rule would eliminate the need to file petitions for modification to use this alternative means of securing battery plugs to receptacles.

MSHA is using direct final rulemaking for this action because the Agency expects that there will be no significant adverse comments on the rule. If no significant adverse comments are received, MSHA will confirm the effective date of the direct final rule. If significant adverse comments are received, MSHA will withdraw the direct final rule and proceed with rulemaking on this proposed rule. A subsequent **Federal Register** document will be published to announce MSHA's action.

DATES: Comments must be received on or before February 21, 2003. Submit written comments on the information collection requirements by February 21, 2003. The direct final rule will become effective March 10, 2003, unless we receive significant adverse comments by February 21, 2003. If we receive such comments, we will publish a timely withdrawal of the direct final rule and proceed with notice and comment rulemaking.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov,* by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm.*

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director; Office of Standards, Regulations, and Variances, MSHA; phone: (202) 693–9442; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov.* You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.htm.*

SUPPLEMENTARY INFORMATION:

I. Direct Final Rules

Concurrent with this proposed rule, we also are publishing a separate, substantively identical direct final rule in the Final Rule section of this **Federal Register**. The simultaneous publication of these documents will speed notice and comment rulemaking under § 553 of the Administrative Procedure Act should we have to withdraw the direct final rule. All interested parties should

comment at this time because we will not initiate an additional comment period.

MSHA has determined that the subject of this rulemaking is suitable for a direct final rule. The Agency believes the actions taken are noncontroversial and therefore does not anticipate receiving any significant adverse comments. If MSHA does not receive significant adverse comments on or before February 21, 2003, the Agency will publish a notice in the **Federal Register** no later than March 10, 2003, confirming the effective date of the direct final rule.

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the direct final rule, MSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice and comment process. A comment recommending an addition to the rule will not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the addition. If significant adverse comments are received, the Agency will publish a notice of significant adverse comments in the **Federal Register** withdrawing the direct final rule no later than March 10, 2003.

In the event the direct final rule is withdrawn because of significant adverse comments, the Agency can proceed with the rulemaking by addressing the comments received and publishing a final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under the companion direct final rule will be treated as comments regarding the proposed rule. Likewise, significant adverse comments submitted to the proposed rule will be considered as comments to the companion rule. The Agency will consider such comments in developing a subsequent final rule.

II. Background Information

Currently, under § 18.41 of Title 30, Code of Federal Regulations, MSHA sets forth design and construction requirements for plug and receptacle-type connectors used with permissible electric equipment approved under part 18. These technical requirements were last revised in March of 1968, which represented the latest advances in battery connector technology considered appropriate for use on mining equipment at that time.

Over the past thirty years, there have been technological improvements to the methods used for securing battery plugs to receptacles. Since the provisions of existing section 18.41(f) do not reflect the latest state-of-the-art technology, mine operators file petitions for modification under Section 101(c) of the Mine Act to take advantage of the technological advancements. Since 1980, there have been approximately 300 petitions filed and granted under Section 101(c) requesting modification to 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 18.41(f) (Plug and receptacle-type connectors) to allow the use of alternate locking devices. The means of securing battery connectors permitted under this proposed rule would allow for the use of padlocks and other equally effective mechanical devices that preclude the inadvertent separation of the battery plug from the receptacle.

In some operations, mine operators encountered difficulties with padlocks in both normal and emergency situations. The use of padlocks requires the maintenance of keys by authorized personnel. Due to the nature of mining operations, padlocks may be filled with mining debris, rendering them difficult or impossible to open with a key. Padlock keys can be misplaced, broken, or bent and may become unusable. This can go unnoticed by the operator until an emergency occurs, when the key may be unavailable or unusable. The removal of a padlock to permit the disconnection of a battery plug in an emergency situation, such as a battery fire, requires a longer period of time and greater effort than the removal of any of the other locking devices permitted in this proposed rule. However, where keys are accessible and padlocks are relatively free from accumulation of dust, padlocks have proven to be effective.

In 1987, to address the problems encountered with the use of padlocks, MSHA issued a policy allowing use of an alternative to padlocks. This policy permits the use of a device that is captive and requires a special tool to disengage and allow separation of the connector. A device is captive when a mechanical connection is made permanent by a locking device that is confined in its mounting location in a manner where, once installed, it cannot be inadvertently removed. The mechanical connection can only be made non-permanent by direct and intervening action using a special tool. A special tool is one that is not normally carried by miners and is used to ensure that constant pressure is maintained to prevent inadvertent separation of the plug from the receptacle.

Since 1980, mine operators have also been granted permission, through the petition for modification process, to use a spring-loaded locking device. MSHA determined that spring-loaded locking devices provide at least the same measure of protection as padlocks and captive locking devices. These devices maintain constant pressure on the threaded ring or equivalent mechanical fastening to prevent the plug from accidentally disengaging from the receptacle.

For both alternate locking devices, the captive locking device and the spring loaded locking device, a warning tag is also required to alert the user that the connector must not be disengaged under load. Withdrawal of a battery plug from the receptacle while the machine is energized (*i.e.*, under load) can create incendive arcing and sparking that could result in a personal injury, explosion, or fire. The requirement for the warning tag, along with part 48 new task training requirements, provide for appropriate hazard recognition when using alternative locking devices. MSHA is unaware of any adverse incidents involving alternate locking devices.

By issuing this proposed rule, MSHA is responding to the requirements of the Regulatory Flexibility Act and Executive Order 12866 that agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses while maintaining needed protections for workers. The amended rule would maintain the protection afforded by the existing standard.

III. Discussion of Alternative Locking Devices on Mobile Battery-Powered Machines

A. Paragraph 18.41

Section 18.41 addresses connectors used on battery and non battery-powered machines. Section 18.41(f) specifies requirements for plug and receptacle-type connectors used on mobile battery-powered machines employed in underground gassy mines. This rulemaking proposes to modify paragraph (f) of 30 CFR 18.41 by adding two new provisions allowing the use of devices that provide at least the same measure of protection as that afforded by the existing standards. The Agency recognizes that battery-powered machine designs differ from conventional machine designs

employing trailing cables. The energy to battery-powered equipment is carried on-board the machine with rechargeable battery assemblies, rather than being transmitted via a trailing cable from a section power center. Because of the inherent design limitations of battery-powered machines, there is no practical way to automatically remove all electrical power from battery-powered machines. Machines powered by trailing cables have circuit-interrupting devices that can be used to de-energize them, whereas most battery-powered machines rely on a plug and receptacle for de-energization. The proper procedure for removing power from a battery-powered machine is to first open the main machine disconnect device and then to disengage the plug from the receptacle. This effectively isolates the battery power from the machine.

B. Subparagraph 18.41(f)(1)

Subparagraph 30 CFR 18.41(f)(1) would retain the existing provision that a plug padlocked to the receptacle would be acceptable in lieu of an interlock provided the plug is held in place by a threaded ring or equivalent mechanical fastening in addition to the padlock. This paragraph also would retain the provision that a connector within a padlocked enclosure would be acceptable.

A padlock used on a battery plug and receptacle-type connector serves a dual purpose. It secures the threaded ring or equivalent mechanical fastening in place. A padlock is also used as a means to prevent the removal of the plug from the receptacle by unauthorized personnel. In this respect, only those persons having keys are considered authorized to remove the plug from the receptacle.

C. Subparagraph 18.41(f)(2)

Subparagraph 30 CFR 18.41(f)(2) would be a new provision which provides for an alternate method for securing the battery plug to the receptacle. The rule would provide that a plug which is held in place by a threaded ring or equivalent mechanical fastening will be acceptable provided that the threaded ring is secured in place with a device that is captive. It would also require a special tool to disengage the device and allow for the separation of the connector. It would further require a warning tag that states: ''DO NOT DISENGAGE UNDER LOAD.''

D. Subparagraph 18.41(f)(3)

Subparagraph 30 CFR 18.41(f)(3) would be a new provision which provides for another alternate method for securing the battery plug to the receptacle. The rule states that a plug held in place by a spring-loaded or other locking device that maintains constant pressure against a threaded ring or equivalent mechanical fastening would be acceptable provided that it would secure the plug from accidental separation. It would further require a warning tag that states: ''DO NOT DISENGAGE UNDER LOAD.''

This subparagraph would allow for the use of other locking devices that may become available in the future. The Agency has included this language to allow for acceptance of equally effective devices. Devices not explicitly defined in this rulemaking must be equally effective and provide at least the same measure of protection as those incorporated under this section.

Neither of the alternatives in subparagraphs 18.41(f)(2) or (f)(3) would impose additional requirements to the 1987 MSHA policy or the granted petitions for modification.

IV. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

Introduction

MSHA is proposing to amend 30 CFR 18.41(f), concerning plug and receptacle-type connectors for mobile battery-powered equipment. The proposed rule would revise and update the existing regulation by allowing the use of alternate locking devices to secure battery plugs to receptacles. Two alternate locking devices are addressed in this proposed rule.

(1) Captive locking devices requiring use of a special tool. These devices have been accepted since 1987 under an MSHA policy allowing their usage.

(2) Spring loaded or other locking devices. Spring-loaded locking devices have been accepted by MSHA under the 101(c) Petition for Modification process.

The proposed rule, once promulgated, would eliminate the need to file petitions for modification (PFM) to use spring-loaded locking devices to secure battery plugs to receptacles. It would also codify the 1987 MSHA policy of allowing acceptance of captive locking devices.

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has fulfilled this requirement for this proposed rule, and based upon its economic analysis, has determined that the proposed rule would not have an annual effect of $100 million or more on the economy. Therefore, it would not be an economically significant regulatory action pursuant to § 3(f)(1) of E.O. 12866.

The proposed rule would eliminate the need for mine operators of underground gassy mines, who choose to use plug and receptacle-type connectors for mobile battery-powered equipment, to file PFMs, and thereby would generate cost savings.

From 1999 to 2001, 66 petitions were filed and granted to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors). Through November 20, 2002, 23 petitions have been filed, for a total of 89 filed petitions from 1999 to 2002. On average, 22 petitions were filed during each of the past 4 years.

Mining Sectors Affected

The proposed rule would apply to all underground gassy mines. All underground coal mines are considered gassy mines and are affected by this proposed rule. Gassy metal and nonmetal (M/NM) mines would also be affected by the proposed rule. Currently there are no battery-powered machines of the type covered by the proposed rule in any of the gassy M/NM mines. Since these devices have not been used in M/NM mines, for purposes of this economic analysis, MSHA assumes that M/NM mines would not be affected by this rule. MSHA estimates that, on average, 22 underground coal mines per year would be affected by this rule.

Benefits

MSHA has qualitatively determined that the proposed rule, which would permit use of alternate locking devices on mobile battery-powered equipment instead of using padlocks, would yield safety benefits relative to the existing rule, which does not permit use of alternate locking devices on mobile battery-powered equipment. The use of alternate locking devices in lieu of padlocks on mobile battery-powered equipment would eliminate the problems associated with difficult removal of padlocks.

Compliance Costs

Cost savings from the proposed rule would accrue to underground coal mines that choose to use spring-loaded locking devices on mobile battery-powered equipment since they would no longer have to file a PFM. Cost savings from the proposed rule are estimated to be $9,747 per year. The cost savings are based upon the elimination of the filing of an average of 22 petitions per year. It is projected that of the 22 mines, 19 would employ 20 to

500 workers, and 3 would employ fewer than 20 workers. For 3 mines that employ fewer than 20 workers these cost savings would be $1,329. For the remaining 19 mines that employ 20 to 500 workers the cost savings would be $8,418.

Mines Employing Fewer Than 20 Workers

The cost savings of $1,329 for mines employing fewer than 20 workers are derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare a petition (3 petitions x 8 hours x $54.92 per hour = $1,318). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hours to copy and mail a petition (3 petitions x 0.1 hours x $19.58 per hour = $6). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are $0.15 per page, and postage is $1 [3 petitions x ((5 pages x $0.15 per page) + $1) = $5].

Mines Employing 20 to 500 Workers

The cost savings of $8,418 for mines that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare a petition (19 petitions x 8 hours x $54.92 per hour = $8,348). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hours to copy and mail a petition (19 petitions x 0.1 hours x $19.58 per hour = $37). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are $0.15 per page, and postage is $1 [19 petitions x ((5 pages x $0.15 per page) + $1) = $33].

There are no substantive changes proposed that apply to any mine that chooses not to use alternate locking devices on mobile battery-powered equipment. Thus, these mines would not incur costs nor generate cost savings as a result of the proposed rule.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the proposed rule on small businesses. Further, MSHA has made a determination with respect to whether or not the Agency can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by these rulemakings. Under SBREFA amendments to the RFA, MSHA must include in the rule a factual basis for this certification. If the proposed rule would have a significant economic impact on a substantial number of small entities, then the Agency must develop an initial regulatory flexibility analysis.

Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action, and hence is required to use the SBA definition.

The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees (13 CFR 121.201). All of the mines affected by this rulemaking fall into this category and hence can be viewed as sharing the special regulatory concerns which the RFA was designed to address.

Traditionally, the Agency has also looked at the impacts of its rules on a subset of mines with 500 or fewer employees''those with fewer than 20 employees, which the mining community refers to as ''small mines.'' These small mines differ from larger mines not only in the number of employees, but also, among other things, in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA rules and the impact of MSHA rules on them would also tend to be different. It is for this reason that ''small mines,'' as traditionally defined by the mining community, are of special concern to MSHA.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on ''small entities'' while continuing MSHA's traditional look at ''small mines.'' MSHA concludes that it can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. The Agency has determined that this is the case both for mines affected by this rulemaking with fewer than 20 employees and for mines affected by this rulemaking with 500 or fewer employees.

Factual Basis for Certification

The Agency's analysis of impacts on ''small entities'' begins with a ''screening'' analysis. The screening compares the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for those small entities. When estimated compliance costs are less than one percent of the estimated revenues, or they are negative (that is, they provide a cost savings), the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, it tends to indicate that further analysis may be warranted. Using either MSHA's or SBA's definition of a small mine, the proposed rule would result only in cost savings to affected mines. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities using either MSHA's or SBA's definition of a small mine. Accordingly, we are publishing the factual basis for our regulatory flexibility certification statement in the **Federal Register**, as a part of this preamble, and are providing a copy to the Small Business Administration, Office of Advocacy. We also will mail a copy of the direct final rule, including the preamble and certification statement, to mine operators and miners' representatives and post it on our Internet Home page at *http://www.msha.gov.*

VI. Paperwork Reduction Act of 1995

The proposed amendments to 30 CFR 18.41(f) would not introduce any new paperwork requirements that are subject to OMB approval under the Paperwork Reduction Act. In addition, the third-party disclosure requirements proposed for 30 CFR 18.41(f)(2) and (3) are not considered a ''collection of information'' because the standard provides the exact language for warning tags [*see* 5 CFR 1320.3(c)(2)].

As a result of the proposed rule, the number of petitions for modification filed annually related to battery plugs would be reduced. Therefore, the proposed rule would result in reducing burden hours and costs in the ICR 1219–0065 paperwork package, which concerns the filing of petitions for modification.

The proposed rule would result in 178.2 burden hour savings annually and associated annual burden cost savings of $9,709 related to the elimination of 22 petitions annually for alternate locking devices to secure battery plugs to receptacles. Of this total, for the 3 mines that employ fewer than 20 workers, there would be 24.3 burden hours savings annually and associated annual burden cost savings of $1,324. For the 19 mines that employ 20 to 500 workers, there would be 153.9 burden hours

savings annually and associated annual burden cost savings of $8,385.

Mines Employing Fewer Than 20 Workers

The annual reduction of 24.3 burden hours and the $1,324 cost savings that would occur for the 3 mines that employ fewer than 20 workers are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare a petition (3 petitions × 8 hours = 24 hours). In addition, on average, a clerical worker takes 0.1 hours, 6 minutes, to copy and mail a petition (3 petitions × 0.1 hours = 0.3 hours). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 24 burden hours = $1,318.10). The hourly wage rate for a clerical worker is $19.58 ($19.58 0.3 burden hours = $5.90).

Mines Employing 20 to 500 Workers

The annual reduction of 153.9 burden hours and the $8,385 cost savings that would occur for the 19 mines that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare a petition (19 petitions × 8 hours = 152 hours). In addition, on average, a clerical worker takes 0.1 hours, 6 minutes, to copy and mail a petition (19 petitions × 0.1 hours = 1.9 hours). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 152 burden hours = $8,347.84). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 1.9 burden hours = $37.20).

The amendment to 30 CFR 18.41(f) would eliminate a need for mine operators to file petitions for modification. Resulting from the decreased number of petitions, MSHA would not conduct investigations related to the determination the merits of the petition. The paperwork containing the information necessary to permit investigation of the petition for modification would not be needed. The petition for modification paperwork requirements are contained in 30 CFR 44.9, 44.10 and 44.11. They are approved under OMB control number 1219–0065. We are not proposing to amend §§ 44.9, 44.10, or 44.11. We are only proposing to amend a regulation that is frequently petitioned. Consequently, MSHA would not submit a paperwork package with this direct final rule. Although it is not necessary to update the Information Collection Requirement document at this time, we will submit the necessary paperwork to record the decrease in burden when appropriate. Our estimate of the number of petitions submitted each year would be reduced by the average number of petitions for modification currently submitted to modify the current regulation.

VII. Other Regulatory Considerations

A. Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, the proposed rule would not include any Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million. MSHA is not aware of any State, local, or tribal government that either owns or operates underground coal mines.

B. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

The proposed rule would not be subject to Executive Order 12630 because it does not involve implementation of a policy with takings implications.

C. Executive Order 12988 (Civil Justice Reform)

MSHA has reviewed Executive Order 12988 and determined that the proposed rule would not unduly burden the Federal court system. The Agency wrote the proposed rule to provide a clear legal standard for affected conduct and has reviewed it carefully to eliminate drafting errors and ambiguities.

D. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effects of the proposed rule on children and has determined that it would have no adverse effects on children.

E. Executive Order 13132 (Federalism)

MSHA has reviewed the proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that it would not have federalism implications.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

MSHA certifies that the proposed rule would not impose substantial direct compliance costs on Indian tribal governments.

G. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, MSHA has reviewed the proposed rule and has determined that it would have no adverse effect on the production or price of coal. Consequently, it would have no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

H. Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in section V in this preamble, MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VIII. Petitions for Modification

On the effective date of the direct final rule, all existing petitions for modification for alternate locking devices for plug and receptacle-type connectors on mobile battery-powered machines would be superseded. Mine operators who have a previously granted petition modifying 30 CFR 75.503 and 18.41(f) would thereafter be considered in compliance with this rule, as long as the equipment is maintained in compliance with the specifications stated in the original petition for modification. All battery-powered equipment approved with locking devices prior to the effective date of this rule would be considered compliant, as long as the equipment is maintained in accordance with the originally approved specifications.

List of Subjects in 30 CFR Part 18

Mine safety and health, Reporting and recordkeeping requirements, Underground mining.

Dated: January 13, 2003.

Dave D. Lauriski,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are proposing to amend chapter I, subpart B, part 18 of title 30 of the Code of Federal Regulations as follows:

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

Subpart B—[Proposed Amendment]

2. Paragraph (f) of § 18.41 is revised to read as follows:

§ 18.41 Plug and receptacle-type connectors.

* * * * *

(f) For a mobile battery-powered machine, a plug and receptacle-type connector will be acceptable in lieu of an interlock provided:

(1) The plug is padlocked to the receptacle and is held in place by a threaded ring or equivalent mechanical fastening in addition to a padlock. A connector within a padlocked enclosure will be acceptable; or,

(2) The plug is held in place by a threaded ring or equivalent mechanical fastening, in addition to the use of a device that is captive and requires a special tool to disengage and allow for the separation of the connector. All connectors using this means of compliance shall have a clearly visible warning tag that states: ''DO NOT DISENGAGE UNDER LOAD''; or,

(3) The plug is held in place by a spring-loaded or other locking device, that maintains constant pressure against a threaded ring or equivalent mechanical fastening, to secure the plug from accidental separation. All connectors using this means of compliance shall have a clearly visible warning tag that states: ''DO NOT DISENGAGE UNDER LOAD.''

[FR Doc. 03–1306 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–02–020]

RIN 2115–AA97

Security Zone; Portland, OR, Rose Festival on Willamette River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a security zone surrounding the City of Portland's Waterfront Park to include all waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges during the annual Rose Festival. Terrorist acts against the United States necessitate this action to properly safeguard all vessels participating in the 2003 Portland Rose Festival from terrorism, sabotage, or other subversive acts. Anticipate the security zone will have limited effects on commercial traffic and significant effects on recreational boaters; ensuring timely escorts through this security zone is a high priority of the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard no later than 60 days after date of publication in the **Federal Register**.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office / Group Portland, 6767 N. Basin Ave, Portland, Oregon 97217. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Portland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski, c/o Captain of the Port, Portland, Oregon at (503) 240–2584.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–02–020), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office/Group Portland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

This security zone is necessary to provide for the safety and security of vessels participating in the 2003 Portland Rose Festival in the navigable waters of the United States.

Discussion of Proposed Rule

This rule, for safety and security concerns, would control vessel movements in a regulated area surrounding vessels participating in the 2003 Portland Rose Festival. U.S. Naval Vessels are covered under 33 CFR 165 subpart G—Protection of Naval Vessels; however, the Portland Rose Festival is a major maritime event that draws many different vessels including Navy, Coast Guard, Army Corps of Engineers, and Canadian. It is crucial that the same level of security be provided to all participating vessels. Entry into this zone would be prohibited unless authorized by the Captain of the Port, Portland or his designated representatives. Commercial vessels that typically transit this section of the Willamette River will be pre-designated and will suffer only minor inconveniences. Recreational vessels may suffer from extended delays and can anticipate a vessel inspection. Recreational vessels are encouraged to avoid this area. Recreational vessels will be allowed into the zone on a case-by-case basis following extensive security measures, and as operations permit. Coast Guard personnel will enforce this security zone and the Captain of the Port may be assisted by other federal, state, or local agencies.

Good cause exists to shorten the notice and comment period of this notice of proposed rulemaking. The normal 90 day comment period has been shortened to 60 days to allow the Coast Guard to evaluate all comments received, make appropriate modifications to the proposed rule, and publish the final rule at least 30 days prior to the implementation of the security zone.

Regulatory Evaluation

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

Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

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

This expectation is based on adequate resources allowing vessel approvals from the Captain of the Port or his designated representatives to transit through the regulated area. For the above reasons, the Coast Guard only anticipates minor economic impact.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of the Willamette River. The likely impacts to small entities would include minor time delays, potential inspections, and possibly non-entrance if the Captain of the Port or his designated representatives sense the vessels participating in the Rose Festival are threatened. The security zone will not have a significant economic impact because adequate resources will allow vessels timely approval from the Captain of the Port or his designated representatives to transit through the regulated area.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because the temporary security zone would not last longer than one week in duration. The temporary security zone would be established on Wednesday, June 4th with the arrival of the first vessel to the City of Portland's Waterfront Park and extend until the last vessel departs the Waterfront Park on Monday, June 9th. A ''Categorical Exclusion Determination'' and corresponding checklist is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1312 to read as follows:

§ 165.1312 Security Zone; Portland, OR Rose Festival on Willamette River.

(a) *Location.* The following area is a security zone: All waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Portland or his designated representatives. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port on VHF channel 16 (156.8 MHz) or VHF channel 22A (157.1 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

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

(d) *Effective period.* This section will be effective generally from the first full Wednesday of June to the next Monday in June. A notice of implementation of regulation will be published in the **Federal Register** 30 days prior to the beginning of the event.

Dated: December 24, 2002.

P.D. Jewell,

Captain, Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–1286 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251, 261, and 295

RIN 0596–AB74

Land Uses; Special Uses Requiring Authorization

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service proposes to amend the regulations at part 251 that govern special uses of National Forest System lands to address management issues related to the special uses program and to clarify categories of activities for which a special use authorization is required. The proposed rule would promote consistent treatment of special uses requiring an authorization; improve the agency's ability to resolve management issues by requiring permits; and reduce the agency's administrative cost by eliminating the need for issuing an order to require a special use permit and not requiring special use authorizations where they serve no management purpose. The proposed rule clarifies requirements regarding authorizations for special uses involving National Forest System roads and trails. The proposed rule also would add definitions to part 251, would revise definitions in part 261, and would revise a term in the heading of part 295, to ensure use of consistent terminology in these parts. Public comment is invited and will be considered in development of the final rule.

DATES: Comments must be received in writing by March 24, 2003.

ADDRESSES: Send written comments to Forest Service, USDA, Attn: Director, Recreation, Heritage and Wilderness Resources (RHWR) Staff, (2720), Mail Stop 1125, Washington, DC 20250–1125 or to *rhwr_rule@fs.fed.us.*

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule in the Office of the Director, RHWR Staff, 4th Floor Central, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW., Washington, DC, on business days between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1706 or (202) 205–1399 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Carolyn Holbrook, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1399, or Randy Karstaedt, Lands Staff, (202) 205–1256.

SUPPLEMENTARY INFORMATION:

Background and Need for Rule

Forest Service regulations at 36 CFR part 251, subpart B, govern authorizations for occupancy and use of National Forest System lands. Section 251.50 of this subpart characterizes as ''special uses'' all uses of National Forest System lands, improvements, and resources, except those authorized by the regulations governing the disposal of timber (part 223) and minerals (part 228) and the grazing of livestock (part 222). The regulation requires an authorization for all ''special uses,'' with certain exceptions.

Approximately 72,000 special use authorizations are in effect on National Forest System lands. These uses cover a variety of activities ranging from individual private uses to large-scale commercial facilities and public services. Examples of authorized land uses include road rights-of-way accessing private residences, apiaries, domestic water supplies and water conveyance systems, telephone and electric service rights-of-way, ski areas, resorts, marinas, outfitter and guide services, and public parks and campgrounds. About 6,000 special use proposals are submitted annually by various entities wanting to use and occupy National Forest System lands. This proposed rule would clarify which activities require a special use authorization. The rule also would revise the term ''National Forest System road'' (formerly, ''forest development road'') to conform to changes in the road management rule at part 212.

In addition, the proposed rule would make the following technical amendments: (1) Revising the definitions for ''National Forest System road'' and ''National Forest System trail'' in section 261.2 to make them consistent with 23 U.S.C. 101; (2) in section 261.55, changing the term ''forest development trail'' to ''National Forest System trail,'' in conformance with the terminology used in part 212 and this proposed rule; and (3) changing the term ''Forest Service Roads'' to ''National Forest System Roads'' in the title of the heading for part 295.

Clarification of Special Uses Requiring an Authorization

Revision of sections 251.50 and 251.51 is needed to address management issues related to the special uses program and to special use authorizations involving National Forest System roads and trails.

The current regulation at 36 CFR 251.50(d) provides that a special use authorization is not required for use of National Forest System roads and trails, unless required by an order issued pursuant to section 261.50 or a regulation issued pursuant to section 261.70. Courts have construed this provision as not requiring an authorization for special uses that occur on National Forest System roads and trails and have invalidated orders issued pursuant to section 261.50 that required a permit for special uses occurring on National Forest System roads. These

rulings have created a gap in regulatory coverage in the special uses program.

The requirement for a special use authorization should be triggered whenever a special use is conducted on National Forest System lands, including on a road or trail. Therefore, the Forest Service proposes to clarify that activities requiring a special use authorization on National Forest System lands are also subject to the requirement for a special use authorization when they are conducted on National Forest System roads and trails (formerly known as forest development roads and trails). The Forest Service has identified four types of special uses that occur on National Forest System roads and trails: noncommercial group uses, outfitting and guiding, recreation events, and commercial filming. The agency is proposing to narrow the exemption for the authorization requirement in section 251.50(d) to exclude special uses occurring on National Forest System roads, and to eliminate the exemption for the authorization requirement for special uses occurring on National Forest System trails. The Forest Service is proposing to eliminate the exemption for special uses conducted on National Forest System trails because there is great potential for resource damage on trails that may not be designed or constructed for the level or type of use that occurs. Furthermore, it is unlikely that there is commercial use of National Forest System trails that should be exempted from the special use authorization requirement.

Under these proposed revisions to the rule, the Forest Service would require special use authorizations and the fees for those authorizations under statutes governing use and occupancy of National Forest System lands. Specifically, for occupancy and use of National Forest System lands, the Forest Service would require commercial filming and still photography permits and permit fees under Public Law 106–206; outfitting and guiding permits and recreation event permits, and permit fees under the Land and Water Conservation Fund Act, 16 U.S.C. 460*l*–6a(c); and noncommercial group use permits (no fee is charged for noncommercial group use permits) under the agency's Organic Act, 16 U.S.C. 551. Further authority for these permit fees is found in the Independent Offices Appropriations Act, 31 U.S.C. 9701, Office of Management and Budget Circular No. A–25, and 36 CFR 251.57(a). These fees would be charged annually for commercial special uses of National Forest System lands, and would be based on the fair market value of the authorized uses of those lands.

The agency has several reasons for proposing that these types of activities set out at section 251.50 require a special use authorization when conducted on National Forest System roads and trails.

First, a growing number of parties engaged in commercial recreation events and outfitting and guiding use this regulatory gap in the current rule to conduct these activities without a special use authorization. They do so by confining their use and occupancy of National Forest System lands only to National Forest System roads and trails. While the organizers or commercial operators of these types of uses may assert that their activities are confined only to a road or trail, sometimes their activities include the use and occupancy of National Forest System lands adjacent to the road or trail. Determining whether a use is confined to a road or trail requires intensive, case-specific monitoring. The proposed rule would eliminate the need for this monitoring by requiring an authorization for all types of special uses that involve the use of National Forest System lands, regardless of whether they occur on or off National Forest System roads and trails.

Second, some commercial operators design their services to fit the regulatory gap, potentially compromising the quality of the recreation experience, public safety, and the interests of the United States. For example, some operators may stop on a road to unload people and equipment to avoid getting off the road. Requiring a special use authorization would eliminate this practice when a safer alternative is available and would require that necessary safety procedures be followed when no such alternative is available. In addition, conducting a special use without an authorization exposes the United States to potential liability. Special use authorizations contain indemnification, insurance, and other provisions that protect the United States from liability arising in connection with the holder's use and occupancy.

Third, the regulatory gap creates an uneven playing field among businesses, some of which operate under a special use authorization and pay a land use fee, while others do not. The Forest Service is required to obtain fair market value for the commercial use of National Forest System lands. The value of these uses of National Forest System roads and trails is directly attributable to the presence of National Forest System lands and resources located outside the confines of the roads and trails. The public should realize a fair market value return for these commercial uses of Federal lands and resources, which can be achieved only by requiring a special use authorization for these uses and charging a land use fee for the authorization.

Fourth, the agency needs to regulate these uses of National Forest System roads and trails to accomplish management objectives and reduce impacts to National Forest System lands and resources. The demand for uses of National Forest System lands and resources has increased in recent years. Along with the growth in demand, there are more conflicts among users and increased pressure on limited land and resources. In some cases, the demand is so great that it is necessary to limit use. When an area becomes popular, uncontrolled use can result in land and resource impacts, user conflicts, or increased vehicular and pedestrian traffic with associated traffic safety concerns on National Forest System roads and trails. The agency attempts to balance the needs of individuals, private groups, and commercial operators when managing uses. The agency proposes to address these concerns and conflicts through special use authorizations for special uses that occur on National Forest System roads and trails.

Additionally, this rule would replace the term ''forest development roads'' with ''National Forest System roads'' to conform to recent regulatory changes made to 36 CFR part 212.

The authority in the proposed rule to regulate special uses occurring on National Forest System roads would not supplant Forest Service authority to regulate road use within the National Forest System under applicable law, including the National Forest Roads and Trails Act. Rather, these authorities would be complementary. For example, a separate road use permit could be issued under Forest Service Manual 7731.16 and Forest Service Handbook 7709.59, section 24, in conjunction with a special use authorization issued under the proposed rule, or road use issues could be addressed within the context of a special use authorization issued under the proposed rule.

Clarification of Special Uses Not Requiring an Authorization

The agency prefers not to regulate uses when it is unnecessary to establish terms and conditions to protect National Forest System lands and resources or to avoid conflict with agency programs or operations. In April 1997, the Forest Service completed a reengineering study of its special uses program that recommended managing special uses in a more businesslike and customer service-oriented manner. The study

found that many special use authorizations are issued for (1) minor uses of National Forest System lands that have nominal effects on National Forest System lands, resources, and programs, (2) uses that are regulated by other agencies in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with Forest Service programs and operations, and (3) routine operation or maintenance within the scope of a valid reserved or outstanding property right. The reengineering study recommended that the agency not require a special use authorization in these cases, as it is unnecessary for purposes of National Forest System land and resource management.

Accordingly, under the proposed rule, for uses other than a noncommercial group use, a special use authorization would not be required if the authorized officer determines that the proposed use has one or more of the following characteristics: (1) the proposed use will have such nominal effects on National Forest System lands, resources, or programs that it is not necessary to establish terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations; (2) the proposed use is regulated by a State or another Federal agency in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with National Forest System programs or operations; or (3) the proposed use is a routine operation or maintenance activity within the scope of a valid reserved or outstanding property right, such as a right-of-way, easement, or reservation.

Proposed Rule Changes

Section 251.50

Current paragraph (a) of section 251.50 requires an authorization for all special uses, unless that requirement is waived as provided in paragraph (c). Proposed paragraph (a) would be revised to identify two additional exceptions, which would be enumerated in proposed paragraphs (d) and (e).

Furthermore, the reference in paragraph (a) concerning the disposal of timber would be expanded to include special forest products, such as greens, mushrooms, medicinal plants, and other plant material collected or gathered for commercial or noncommercial use. Proposed paragraph (a) would state that the disposal of these materials is regulated by part 223. Many forest managers have mistakenly administered these activities as special uses. Adding a reference to special forest products would distinguish the disposal of forest products as an activity authorized by other than a special use authorization.

Current paragraph (b) of section 251.50 provides for the temporary occupancy of National Forest System lands in an emergency for the protection of life and property, as long as a special use authorization is obtained at the earliest opportunity, unless the requirement for a special use authorization is waived. Proposed paragraph (b) would be expanded to clarify that those temporarily occupying National Forest System lands without a special use authorization assume liability, and must indemnify the United States, for all injury, loss, or damage arising in connection with the temporary occupancy. This added provision is necessary to protect the public interest should injury, loss, or damage occur as a result of the temporary occupancy prompted by an emergency.

With limited exceptions, current paragraph (c) states that noncommercial recreational activities, other than noncommercial group use, do not require a special use authorization, and gives examples of these activities. The agency is proposing no change to this list. Paragraphs (c)(1) and (c)(2) would be combined and redesignated as proposed paragraph (c)(2). Paragraph (c)(3) would be redesignated as proposed paragraph (c)(1).

Paragraph (d) would be revised. The existing paragraph provides that, unless otherwise required by order issued pursuant to section 261.50 or by regulation issued pursuant to section 261.70, any use of existing forest development roads or trails does not require a special use authorization. The agency proposes to revise paragraph (d) by changing ''forest development road'' to ''National Forest System road'' to conform to changes made to parts 212, 261, and 295 regarding roads, and by removing the word ''trail.'' In addition the agency proposes to change ''use of'' to ''travel on'' a road or trail.

Proposed paragraphs (d) and (d)(1) also would clarify that noncommercial group uses, outfitting and guiding, recreation events, and commercial filming conducted on National Forest System roads require a special use authorization. For example, a special use authorization would be required for an outfitter who charges a customer for the delivery of livestock or recreation equipment on a National Forest System road for the customers to use on adjacent National Forest System lands. A second example is a guide who conducts commercial, vehicular tours on National Forest System roads, regardless of whether the guide's customers are confined to the vehicle. A third example is the use of motion picture equipment on a National Forest System road that involves the advertisement of a product or service. A final example is an endurance ride involving hundreds of participants, for which no entry fee is charged, conducted on a National Forest System road.

The proposed paragraph (d)(2) would include the authority currently in paragraph (d) for Regional Foresters and Forest Supervisors to issue orders (section 261.50) and regulations (section 261.70) to prohibit or regulate other uses of National Forest System roads, on a case-specific basis.

Proposed paragraph (e) would be added to specify instances where the requirement to obtain a special use authorization may be waived for certain uses other than a noncommercial group use. Under this proposed paragraph, the special use authorization requirement would be waived only after a proposal for a special use is submitted and the authorized officer determines that the proposed use meets the criteria for waiver.

Proposed paragraph (e)(1) would be added to allow the authorized officer to waive the special use authorization requirement for minor, incidental uses that will have such nominal effects on National Forest System lands, resources, or programs that it is not necessary to establish terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations. Examples of minor, incidental uses could include mailboxes on approved mounts or small identification signs for property. This proposed rule would not relieve a party from requesting advance approval from an authorized officer for such uses or occupancies. Rather, the proposed rule would provide the authorized officer with the ability to waive the requirement for a special use authorization when, based upon professional judgment and experience with comparable uses, the authorized officer determines that no forest management objectives would be achieved through issuance of an authorization. Generally, experience has demonstrated that the cost to the agency to issue and administer authorizations for these types of minor, incidental uses far exceeds any public benefit in terms of land and resource protection.

Paragraph (e)(2) would be added to exempt proposed uses that are regulated by another agency in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with National Forest System programs or operations. An example would be the taking of game or other animals, which is regulated by States. Another example is the delegation of authority by the Forest Service to a different agency to serve as lead agency for regulating certain uses, such as in connection with administration of an oil or gas pipeline special use authorization under the Mineral Leasing Act. This provision would serve to reduce the dual regulation of uses by the Forest Service and other agencies, where another agency's regulatory jurisdiction is satisfactory to meet Forest Service management objectives.

Paragraph (e)(3) would be added to clarify that no special use authorization is required for activities already authorized within the scope of a valid reserved, granted, or outstanding property right, such as a right-of-way, easement, or reservation. Paragraph (e)(3) also would provide that no special use authorization is required for conducting routine operation and maintenance activities within the scope of an outstanding statutory right for certain highways, ditches, or canals. Conversely, under this proposed provision, any activities (including operation, maintenance, construction, or reconstruction) that are outside the scope of an outstanding statutory right would require a special use authorization. In addition, any activities other than routine operation or maintenance, such as construction or reconstruction, that are within the scope of an outstanding statutory right would require a special use authorization. The proposed regulation would require holders of any of these rights to propose on-the-ground activities to the authorized officer before conducting them. The authorized officer would then have the opportunity to determine whether all or some of the proposed activities qualify for the waiver provided under proposed paragraph (e)(3) and can be conducted without a special use authorization.

Waiving the requirement for a special use authorization under the circumstances identified in proposed paragraphs (e)(1) through (e)(3) would improve management efficiency and allow the agency to focus its limited appropriations on management of special uses that have a greater potential impact on National Forest System lands, resources, or programs.

Section 251.51

Section 251.51 of the current regulations defines the more significant and commonly used terms and phrases in part 251, subpart B. The proposed section 251.51 would add definitions for the following terms: ''Commercial filming,'' ''forest road or trail,'' ''guiding,'' ''National Forest System road,'' ''outfitting,'' ''recreation event,'' and ''still photography.'' Providing a definition for these terms would improve public and agency understanding and interpretation of the proposed revisions to section 251.50 provided in this notice.

Section 261.2

The definitions of ''National Forest System road'' and ''National Forest System trail'' in proposed section 261.2 would be revised and a new definition for ''forest road or trail'' would be added for consistency with 23 U.S.C. 101 and this part.

Section 261.55

The term ''forest development trails'' would be changed to ''National Forest System trails'' in the heading and introductory text of proposed section 261.55.

Part 295

The term ''forest Service road'' in the current title of the part 295 heading would be changed to ''National Forest System road'' in the proposed title of this part for consistency with the terminology in parts 251 and 261.

Regulatory Certifications

Environmental Impact

The proposed changes to the rule at 36 CFR 251.50 and 251.51 would provide more consistent procedures for processing special use proposals and applications and administering special use authorizations for use and occupancy of National Forest System lands. The proposed rule also would make terminology consistent in parts 251, 261, and 295. The changes are intended to improve administrative efficiencies and would have no environmental effects. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist as currently defined that would require preparation of an environmental assessment or environmental impact statement. A final determination will be made for the final rule.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant rule. This proposed rule would not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This proposed rule would not interfere with an action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed rule would not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this proposed rule is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). It has been determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the act because the proposed rule would not impose record-keeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market. To the contrary, the efficiencies and consistency to be achieved by this rule should benefit small businesses that seek to use and occupy National Forest System lands by ensuring consistency in procedures across forests and regions and by eliminating costly, time-consuming, and unnecessary processing of certain special use applications and administration of certain special use authorizations. The benefits, most of which cannot be quantified, are not likely substantially to alter costs to small businesses.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rule would not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988 on civil justice reform. If this proposed rule were adopted, (1) all State and local laws and regulations that are in conflict with this proposed rule or that would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this proposed rule under the requirements of Executive Order 13132 on federalism, and has made an assessment that the proposed rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, this proposed rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with tribes is not required.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

The forms for special use applications and authorizations have been approved for use by the Office of Management and Budget (OMB) and assigned OMB control number 0596–0082. Therefore, this proposed rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Moreover, the proposed rule will reduce the number of applicants for special use authorizations by clarifying those circumstances when special use authorizations are not required. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects

36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands-rights-of-way, Reporting and recordkeeping requirements, Water resources.

36 CFR Part 261

Law Enforcement, National forests.

36 CFR Part 295

National forests, Traffic regulations.

Therefore, for the reasons set out in the preamble, the Forest Service proposes to amend subpart B of part 251, subpart A of part 261, and part 295 of Title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

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

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. Revise § 251.50 to read as follows:

§ 251.50 Scope.

(a) All uses of National Forest System lands, improvements, and resources, except those authorized by the regulations governing disposal of timber and special forest products, such as greens, mushrooms, and medicinal plants (part 223), minerals (part 228), and grazing of livestock (part 222), are designated ''special uses.'' Before conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a special use authorization from the authorized officer, unless that requirement is waived by paragraphs (c) through (e) of this section.

(b) Nothing in this section prohibits the temporary occupancy of National Forest System lands without a special use authorization for the protection of life and property in emergencies, if a special use authorization for that occupancy is obtained at the earliest opportunity, unless waived pursuant to paragraphs (c) through (e) of this section. Those temporarily occupying National Forest System lands without a special use authorization assume liability and must indemnify the United States for all injury, loss, or damage arising in connection with the temporary occupancy.

(c) A special use authorization is not required for noncommercial recreational activities, such as camping, picnicking, hiking, fishing, boating, hunting, and horseback riding, or for noncommercial activities involving the expression of views, such as assemblies, meetings, demonstrations, and parades, unless:

(1) The proposed use is a noncommercial group use as defined in § 251.51; or

(2) Authorization of that use is required by an order issued pursuant to § 261.50 or by a regulation issued pursuant to § 261.70 of this chapter.

(d) Travel on any National Forest System road must comply with all Federal and State law governing the road to be used. Travel on any National Forest System road does not require a special use authorization, unless:

(1) The travel is for the purpose of engaging in a noncommercial group use, outfitting or guiding, a recreation event, commercial filming, or still photography, as defined in § 251.51; or

(2) Authorization of that use is required by an order issued under § 261.50 of this chapter or by a regulation issued under § 261.70 of this chapter.

(e) For proposed uses other than a noncommercial group use, a special use authorization is not required if the authorized officer determines that the proposed use has one or more of the following characteristics:

(1) The proposed use will have such nominal effects on National Forest System lands, resources, or programs that it is not necessary to establish terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations;

(2) The proposed use is regulated by a State agency or another Federal agency in a manner that is adequate to protect

National Forest System lands and resources and to avoid conflict with National Forest System programs or operations; or

(3) The proposed use is an activity within the scope of a valid reserved, granted, or outstanding property right, such as a right-of-way, easement, or reservation, or is a routine operation or maintenance activity within the scope of an outstanding statutory right for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976) or for ditches and canals pursuant to R.S. 2339 (43 U.S.C. 661, as amended).

3. Add the following definitions in alphabetical order to § 251.51:

§ 251.51 Definitions.

* * * * *

Commercial filming—use of motion picture, videotaping, sound recording, or any other moving image or audio recording equipment on National Forest System lands that involves the advertisement of a product or service, the creation of a product for sale, or the use of models, actors, sets, or props, but not including activities associated with broadcasting breaking news.

* * * * *

Forest road or trail—a road or trail wholly or partly within or adjacent to and serving the National Forest System, and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

* * * * *

Guiding—providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for pecuniary remuneration or other gain to individuals or groups in pursuit of a natural resource-based outdoor activity on National Forest System lands.

* * * * *

National Forest System road—a forest road under the jurisdiction of the Forest Service.

* * * * *

Outfitting—renting on or delivering to National Forest System lands for pecuniary remuneration or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment for the pursuit of a natural resource-based outdoor activity.

* * * * *

Recreation event—a recreational activity conducted on National Forest System lands for which an entry or participation fee is charged, such as animal, vehicle, or boat races; dog trials; fishing contests; rodeos; adventure games; and fairs.

* * * * *

Still photography—use of still photographic equipment on National Forest System lands that (1) takes place at a location where members of the public are generally not allowed or where additional administrative costs are likely, or (2) uses models or props that are not a part of the site's natural or cultural resources or administrative facilities.

* * * * *

PART 261—PROHIBITIONS

Subpart A—General Prohibitions

4. The authority citation for subpart A continues to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C.1133(C)–(d)(1); 16 U.S.C. 620(f).

5. Revise § 261.2 to add a definition for ''Forest road or trail'' in alphabetical order and to revise the definitions for ''National Forest System road'' and ''National Forest System trail'' to read as follows:

§ 261.2 Definitions.

* * * * *

Forest road or trail—a road or trail wholly or partly within or adjacent to and serving the National Forest System, and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

* * * * *

National Forest System road—a forest road under the jurisdiction of the Forest Service.

National Forest System trail—a forest trail under the jurisdiction of the Forest Service.

* * * * *

6. Revise the heading and introductory text of § 261.55, to read as follows:

§ 261.55 National Forest System trails.

When pursuant to an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a National Forest System trail: * * *

* * * * *

7. Revise the heading for part 295 to read as follows:

PART 295—USE OF MOTOR VEHICLES OFF NATIONAL FOREST SYSTEM ROADS

8. The authority citation for part 295 continues to read as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551): 50 Stat. 525, as amended (7 U.S.C. 1011): E.O. 11644, 11989 (42 FR 26959).

Dated: January 8, 2003.

Dale N. Bosworth,

Chief.

[FR Doc. 03–1291 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–01–003; FRL–7429–6]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) approves numerous revisions to the State of Oregon Implementation Plan submitted to EPA by the Director of the Oregon Department of Environmental Quality (ODEQ) on November 5, 1999, March 7, 2000, June 26, 2001, and November 4, 2002. The revisions were submitted in accordance with the requirements of section 110 and parts C and D of title I of the Clean Air Act (hereinafter CAA or Act).

DATES: Written comments must be received on or before February 21, 2003.

ADDRESSES: Written comments should be addressed to: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ–107), Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: December 17, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 03–853 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV–040–0067; FRL–7440–5]

Approval and Promulgation of Implementation Plans; Nevada—Las Vegas Valley PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual and 24-Hour PM–10 Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve provisions of the *PM–10 State Implementation Plan for Clark County,* June 2001, (Clark County plan) that address attainment of the annual and 24-hour PM–10 national ambient air quality standards. We also propose to grant Nevada's request to extend the Clean Air Act deadline for attaining the 24-hour PM–10 standard in the Las Vegas area from 2001 to 2006.

DATES: Comments on this proposal must be received in writing by February 21, 2003. Comments should be addressed to the contact listed below.

ADDRESSES: Comments should be mailed to: Karen Irwin, Office of Air Planning (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

A copy of docket No. NV–01–03, containing the EPA technical support document (TSD) and other material relevant to this proposed action, is available for public inspection at EPA's Region 9 office during normal business hours. We may charge you a reasonable fee for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below: Clark County Department of Air Quality Management, 500 S. Grand Central Pky, Las Vegas, Nevada 89155. Nevada Division of Environmental Protection, 333 West Nye Lane, Carson City, Nevada 89710.

Electronic Availability

This document and the TSD are also available as electronic files on EPA's Region 9 Web Page at *http://www.epa.gov/region09/air*.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947–4116, email: *irwin.karen@epa.gov*.

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I. Summary of Today's Proposal

First, we propose to approve the provisions in the *PM–10 State Implementation Plan for Clark County,* submitted on July 25, 2001,[1] (''the Clark County serious area plan'' or ''Plan'') that address attainment of the annual and 24-hour PM–10 standards.[2] Our proposed actions are based on our initial determination that the Clark County serious area plan complies with the Clean Air Act's (CAA or ''the Act'') requirements for serious PM–10 nonattainment area plans.

First, we propose to approve the following specific elements of the plan as they pertain to the standards:

- Demonstration that the plan provides for implementation of best available control measures (BACM);
- Emissions inventory;
- Demonstration of attainment of the annual standard by the CAA deadline of December 31, 2001 and demonstration that attainment of the 24-hour standard by December 31, 2001 is impracticable;
- Demonstration that attainment of the 24-hour standard will occur by the most expeditious alternative date practicable, in this case, December 31, 2006;
- Clark County fugitive dust rules (Sections 90 through 94 and portions of Section 0);
- Demonstration that the plan provides for reasonable further progress and quantitative milestones;
- Transportation conformity budget; and
- Contingency measures.

Second, we are proposing to grant Nevada's request to extend the attainment date for the 24-hour PM–10 standard from December 31, 2001 to December 31, 2006. We make this proposal based on our determination that the State has met the CAA's criteria for granting such extensions.

This preamble describes our proposed actions on the Clark County serious area

[1] On October 24, 2002, the Nevada Division of Environmental Protection submitted to EPA revised versions of Clark County sections 90 through 93, dated November 20, 2001, which supersede earlier versions submitted with the Plan. Also, on November 19, 2002, the Nevada Division of Environmental Protection submitted to EPA an amendment to the Clark County PM–10 Plan adopted by the Clark County Board of Commissioners on November 19, 2002.

[2] There are two separate national ambient air quality standards for PM–10, an annual standard of 50 $\mu g/m^3$ and a 24-hour standard of 150 $\mu g/m^3$.

plan and provides a summary of our evaluation of the plan. Our detailed evaluation of the Plan can be found in the TSD that accompanies this proposal. See ''Technical Support Document Proposing Approval of the PM–10 State Implementation Plan for the Clark County Serious PM–10 Nonattainment Area Annual and 24-Hour PM–10 Standards,'' December 19, 2002. A copy of EPA's TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

II. Background to Today's Proposals

A. PM–10 Air Quality in the Las Vegas Area

The Las Vegas Valley Nonattainment Area, which coincides with Hydrographic Basin 212, is roughly 1,500 square miles in size and encompasses the City of Las Vegas, the City of North Las Vegas, the City of Henderson and the unincorporated areas of Clark County. The population of the area is approximately 1.15 million people and is expected to grow to 1.59 million by 2006.

The area violates both the annual [3] and 24-hour PM–10 standards. In 1990, the area was designated nonattainment for PM–10 and classified as moderate. In 1993, because of continuing violations of both PM–10 standards, the area was reclassified to serious and required to provide for the implementation of BACM by February 8, 1997. 58 FR 3334 (January 8, 1993).

The principal contributors to elevated PM–10 levels in the Las Vegas area are fugitive dust sources such as disturbed vacant lots, construction sites, unpaved roads and paved road dust. Fugitive dust is particulate matter suspended in the air either by mechanical disturbance of the surface material or by wind action blowing across surfaces.

B. Previous Actions on Clark County PM–10 Plans

Clark County prepared and submitted a serious area PM–10 plan in 1997 that EPA proposed to disapprove, along with previously submitted plans. 65 FR 37324, June 14, 2000. On December 5, 2000, prior to EPA taking final action on its proposed disapproval, the State of Nevada withdrew the moderate and serious area plans for Clark County. On January 5, 2001, EPA proceeded with a finding of nonsubmittal, effective as of December 20, 2000, which began the 18-month time clock for mandatory application of sanctions and 2-year time clock for promulgation of a federal implementation plan (FIP). 66 FR 1046. On June 19, 2001, the Clark County Board of Commissioners adopted a new serious area PM–10 plan titled ''PM–10 State Implementation Plan for Clark County'' (''Plan''), which was submitted to EPA on July 25, 2001. On January 31, 2002, EPA made a completeness finding on the Plan. We have also determined that the conformity budgets in the plan are adequate. 67 FR 1461, January 11, 2002. Our adequacy determination was effective on January 28, 2002.

III. The CAA's Planning Requirements for Serious PM–10 Nonattainment Areas

The Las Vegas area is a PM–10 nonattainment area that has been reclassified to serious because it failed to attain by the moderate area attainment date of December 31, 1994. Such an area must submit, within 18 months of the reclassification, revisions to its implementation plan that address the CAA requirements for serious PM–10 nonattainment areas. CAA section 189(b)(2). These requirements are:

(a) Assurances that the BACM, including best available control technology (BACT) for stationary sources, for the control of PM–10 shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B)); [4]

(b) Assurances that BACT on major stationary sources of PM–10 precursors shall be implemented no later than 4 years after the area is reclassified except where EPA has determined that such sources do not contribute significantly to exceedences of the PM–10 standards (CAA section 189(e));

(c) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001 or where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2001 is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA sections 188(c)(2) and 189(b)(1)(A));

(d) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by the applicable attainment date (CAA sections 172(c)(2) and 189(c)); and

(e) A comprehensive, accurate, and current inventory of actual emissions from all sources of PM–10 (CAA section 172(c)(3)).

Serious area PM–10 plans must also include contingency measures to be implemented if the area fails to make RFP or attain by its attainment deadline. These contingency measures are to take effect without further action by the State or the Administrator. CAA section 172(c)(9).

Furthermore, serious area PM–10 plans must meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280, and a description of enforcement methods as required by 40 CFR 51.111.

We have issued a General Preamble [5] and Addendum to the General Preamble [6] describing our preliminary views on how the Agency intends to review SIPs submitted to meet the CAA's requirements for PM–10 plans. The General Preamble mainly addresses the requirements for moderate areas and the Addendum, the requirements for serious areas.

BACM Requirement

The CAA does not define what level of control constitutes a BACM-level of control. In guidance, we have defined it to be, among other things, the maximum degree of emission reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts. Addendum at 42010. This level of control is

[3] However, in a June 2002 letter, the Clark County Department of Air Quality Management (DAQM) provides an analysis of PM–10 microscale sites that demonstrates attainment of the annual standard as forecasted in the Clark County Plan as of December 31, 2001. While EPA is proposing to approve the Plan's attainment demonstration for the annual standard under CAA section 189, our action does not include an official finding of attainment of the annual standard per CAA section 188.

[4] When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) remains and is augmented by the requirement to implement BACM. Thus, a serious area PM–10 plan must, in addition to BACM, provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirement has not been satisfied in the area's moderate area plan. However, to the extent that a serious nonattainment area plan provides for BACM, we interpret the BACM requirement as generally subsuming the RACM requirement (*i.e.* if we determine that the measures are indeed the ''best available,'' we have necessarily concluded that they are ''reasonably available'').

[5] ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

[6] ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994)

dependent on the deadline by which BACM must be implemented.[7]

We also considered a BACM-level control as going beyond existing RACM-level controls, such as expanding use of RACM (e.g, paving more miles of unpaved roads). Addendum at 42013. The word ''best'' implies that there should be a greater emphasis on the merits of the measure or technology alone and less flexibility in considering other factors. Additionally, we believe that BACM should emphasize prevention rather than remediation (e.g., preventing track out at construction sites rather than simply requiring clean up of tracked-out dirt). Addendum at 42013.

The stringency of a control measure is a function of both the measure's applicability and its control requirement (i.e., what sources in the category are subject to the measure and what does the measure require the sources to do to reduce emissions).[8] Both these elements must be specified before the measure's level of control can be determined. Thus in setting a BACM, a state must specify both the measure's control requirement and its applicability. The control requirement alone is not sufficient.

BACM must be applied to each significant (i.e., non-de minimis) source category. Addendum at 42011. In guidance, we have established a presumption that a ''significant'' source category is one that contributes 5 μg/m3 or more of PM–10 to a location of 24-hour violation and 1 μg/m3 or more for the annual standard. Addendum at 42011. However, whether the threshold should be lower than this in any particular area depends upon the specific facts of that area's nonattainment problem. Specifically, it depends on whether requiring the application of BACM on source categories below a proposed de minimis level would meaningfully expedite attainment.

We have outlined in our guidance a multi-step process for identifying BACM. Addendum at 42010–42014. The steps are:

1. develop a detailed emissions inventory of PM–10 sources and source categories,

2. model to evaluate the impact on PM–10 concentrations over the standards of the various sources and source categories to determine which are significant,

3. identify potential BACM for significant source categories and evaluate their reasonableness, considering technological feasibility, costs, and energy and environmental impacts and

4. provide for the implementation of the BACM or provide a reasoned justification for rejecting any potential BACM.

When the process is complete, the individual measures[9] should then be converted into a legally enforceable vehicle (e.g., a regulation or permit process). CAA sections 172(6) and 110(a)(2)(A). Also, the regulations or other measures should meet EPA's criteria regarding the enforceability of SIPs and SIP revisions. General Preamble at 13541.

RACM Requirement

When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) remains. Thus, a serious area PM–10 plan must also provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirement has not been satisfied in the area's moderate area plan.

However, we do not normally conduct a separate evaluation to determine if a serious area plan's measures also meet the RACM requirements as interpreted by us in the General Preamble at 13540. This is because in our serious area guidance (Addendum at 42010), we interpret the BACM requirement, as generally subsuming the RACM requirement. Therefore, a separate analysis to determine if the measures represent a RACM level of control is generally not necessary. Our proposed approval of the Clark County Plan's provisions relating to the implementation of BACM is also a finding that the plan provides for the implementation of RACM.

The Clean Air Act Requirements for Attainment Date Extensions

Section 188(e) of the Act allows us to extend the attainment date for a serious area for up to five years beyond 2001 if attainment by 2001 is impracticable. However, before we may grant an extension of the attainment date, the State must first:

1. Apply to us for an extension of the PM–10 attainment date beyond 2001,

2. Demonstrate that attainment by 2001 is impracticable,

3. Have complied with all requirements and commitments applying to the area in its implementation plan,

4. Demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state and/or are achieved in practice in any state and are feasible for the area, and

5. Submit a demonstration of attainment by the most expeditious alternative date practicable.

In determining whether to grant an extension and the appropriate length of the attainment date extension, we may consider:

1. The nature and extent of the nonattainment problem,

2. The types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and international transport),

3. The population exposed to concentrations in excess of the standard,

4. The presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and

5. The technological and economic feasibility of various control measures.

Under the Act, we may grant only one extension for an area and the extension cannot be for more than 5 years after 2001; that is, the extended attainment date can be no later than December 31, 2006.

IV. The Clark County Plan's Compliance With the CAA's Requirements for Serious PM–10 Nonattainment Areas

The following sections present a condensed discussion of our evaluation of the Clark County Plan's compliance with the applicable CAA requirements for attaining the annual and 24-hour PM–10 standards. Our complete evaluation is found in the TSD for this proposal. A copy of the TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

A. Completeness of the SIP Submittal

CAA section 110(k)(1)(B) requires us to determine if a SIP submittal is complete within 60 days of its receipt. This completeness review allows us to quickly determine if the submittal

[7] We have long held that an otherwise available measure is not reasonable if it cannot be implemented on a schedule that will advance the attainment date. See, *e.g.*, 57 FR 13498, 15560 (April 16, 1992). See also *Delaney* v. *EPA*, 898 F.2d 695 (9th Cir. 1990) which required the adoption of ''all available control measures'' to attain ''as soon as possible'' and not simply all available control measures. The most clear example of this is a measure that cannot be implemented until after the applicable attainment date.

[8] An example: A measure requires all unpaved roads with average daily trips (ADT) over 150 be stabilized by either paving, graveling, or treating with chemical stabilizers. The control requirement here is ''stabilize using one of these three methods: paving, graveling, or chemical stabilization'' and the applicability is ''all unpaved roads with ADT over 150.''

[9] Here our guidance refers to RACM, however, since BACM builds upon RACM, the same principles apply.

includes all the necessary items and information we need to take action on it. We make completeness determinations using criteria we have established in 40 CFR part 51, appendix V.

On January 5, 2001, we took final action to find that the State of Nevada had failed to make PM–10 nonattainment area SIP submittals required for the Las Vegas Valley Planning Area under the CAA. See 66 FR 1046 (January 5, 2001). That final action, which was effective as of December 20, 2000, triggered an 18-month clock for mandatory application of sanctions under section 179(a) of the Act and the implementing regulations set forth at 40 CFR 52.31. In our final action, we indicated that the State may ''turn off'' the sanctions clock through the submission of a complete SIP submittal.

Under section 110(k)(1)(B), if we do not make a completeness determination within six months of receipt of a SIP submittal, then the submittal shall be deemed complete by operation of law. We had not made this determination by January 25, 2002 (*i.e.,* six months from receipt); thus, the State's SIP submittal dated July 23, 2001 was deemed complete by operation of law effective January 25, 2002.

However, a SIP submittal that is deemed complete by operation of law does not stop a sanctions clock started by a finding by us under section 179(a) of the Act. To stop the sanctions clock, we must make an affirmative determination that the deficiency forming the basis of the finding (in this case, our finding of failure to submit required PM–10 plan elements) has been corrected. See 40 CFR 52.31(d)(1).

Therefore, we have reviewed the July 23, 2001 PM–10 submittal from the State of Nevada and affirmatively determined that it satisfies our completeness criteria set forth for such determinations in appendix V of 40 CFR part 51 and that it is thereby complete for the purposes of section 110(k)(1) of the Act. Furthermore, the State's submission of this complete plan corrects the deficiency forming the basis for our finding published in the **Federal Register** on January 5, 2001. We notified the State of our completeness determination by letter to NDEP on January 31, 2002, and our letter to NDEP permanently stops the sanctions clock as of that date.

B. Adequacy of the Transportation Conformity Budgets

CAA Section 176(c) requires that federally-funded or approved transportation plans, programs, and projects in nonattainment areas ''conform'' to the area's air quality implementation plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards. We have issued a conformity rule that establishes the criteria and procedures for determining whether or not transportation plans, programs, and projects conform to a SIP. *See* 40 CFR part 93, subpart A.

One of the primary tests for conformity is to show transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and meet the air quality standards. The motor vehicle emissions levels needed to make progress toward and meet the air quality standards are set in an area's attainment and/or RFP plans and are known as the ''emissions budget for motor vehicles.'' Emissions budgets are established for specific years and specific pollutants. *See* 40 CFR 93.118(a).

Before an emissions budget in a submitted SIP revision can be used in a conformity determination, we must first determine that it is adequate. The criteria by which we determine adequacy of submitted emission budgets are outlined in our conformity rule in 40 CFR 93.118(e)(4). A finding of adequacy does not approve an emissions budget, it simply allows States to begin to use the budget in conformity determinations pending our action on the overall SIP.

The Clark County Plan establishes a mobile source emissions budget of 201.75 tons per day (tpd) for 2001 and an emissions budget of 141.41 tpd for 2006. This regional budget is applicable to both the annual and 24-hour PM–10 standards.

On November 9, 2001, we notified the State that we find adequate for transportation conformity purposes this motor vehicle emissions budget. Our adequacy determination was effective on January 28, 2002 and is documented in section C of the TSD. As a result of our adequacy finding, the Regional Transportation Commission (RTC) and the Federal Highway Administration (FHWA) are now required to use this budget in all conformity analyses.

As discussed later in this preamble, we are proposing to approve both the attainment and reasonable further progress demonstrations for the 24-hour standard in the Clark County Plan. An emissions budget was set at 155.77 tpd for the 2003 interim year, which is consistent with these demonstrations. We, therefore, propose to approve the motor vehicle emissions budget for the annual and 24-hour PM–10 standards under CAA section 176(c).

C. Adequate Monitoring Network

We discuss the adequacy of the monitoring network in this preamble solely to support our finding that the plan appropriately evaluates the PM–10 problem in the Las Vegas area. Reliable ambient data is necessary to validate the base year air quality modeling which in turn is necessary to assure sound attainment demonstrations.

The CAA requires states to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. CAA section 110(a)(2)(B)(i). Our regulations in 40 CFR part 58 establish specific regulatory requirements for operating air quality surveillance networks to measure ambient concentrations of PM–10, including measurement method requirements, network design, quality assurance procedures, and in the case of large urban areas, the minimum number of monitoring sites designated as National Air Monitoring Stations (NAMS).

Ambient networks, however, do not need to meet all our regulations to be found adequate to support air quality modeling. A good spatial distribution of sites, correct siting, and quality-assured and quality-controlled data are the most important factors for air quality modeling. Nonattainment area plans developed under title I, part D of the Clean Air Act are not, in general, required to address how the area's air quality network meets our monitoring regulations. These plans are submitted too infrequently to serve as the vehicle for assuring that monitoring networks remain current.

The DAQM operates 17 monitoring sites collecting PM–10 data in the Las Vegas area, about half of which are designated as special purpose monitors (SPMs) with the remaining monitors designated as NAMS or state/local monitoring stations. Table MON–2 in the TSD lists the names of the sites and their locations in the Las Vegas area as of July 2000. Many of the SPM sites operated by the DAQM are in fact long term sites that have been in operation longer than three years. EPA performed a technical system audit of the DAQM's ambient air monitoring program in August 2001. In this audit, EPA identified some concerns with how DAQM characterizes its monitoring networks in terms of site objectives, that at least two more NAMS sites are needed, and that the quality assurance program needs to be better defined and integrated into the daily functions of the air monitoring program. However, we

do not believe these deficiencies adversely affect our ability to determine the air quality status of the area.

The Las Vegas PM–10 network employs a large number of monitoring sites that are spread out over the Las Vegas valley. Given the nature of the emission sources, which are mostly local fugitive dust sources, and since PM–10 is a localized yet widespread pollutant, we believe a dense network such as DAQM operates is appropriate.

The 24-hour attainment demonstration in the Clark County plan relies, in part, on showing attainment at five specific monitoring sites. These sites were chosen based on the fact that they represent the worst case environments for a mix of PM–10 emission sources: East Flamingo site for its high traffic volume; Green Valley for its nearby highway construction and race tracks; J.D. Smith for its mixture of roadways, small point sources and construction sites; Craig Road for its light industrial facility and vacant land influences; and Pittman for its larger stationary sources, unpaved parking lots and unpaved roads. In 1997–1999 these sites cumulatively recorded 43 exceedences of the 24-hour PM–10 standard. They are also representative of similar areas in the Las Vegas area that may not have monitoring sites.

In conclusion, we believe the monitoring network operated by the DAQM in 1998 was adequate to support the technical evaluation of the PM–10 nonattainment problem for the Clark County Plan. The network utilizes EPA reference or equivalent method monitors and the DAQM performs routine precision and accuracy checks of the monitoring equipment and performs necessary maintenance when warranted.

D. Emissions Inventory

CAA section 172(c)(3) requires that nonattainment area plans include a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area in the designated base year and a future attainment year. To meet this requirement, Clark County prepared a 1998 base year annual emissions inventory for the entire nonattainment area. See Clark County Plan, Chapter 3, Table 3–1. Emissions inventories for the baseline and future years for both the annual and 24-hour standards are necessary prerequisites to meet requirements for BACM and demonstration of attainment per CAA section 189(b). In the Las Vegas Valley, both regional and microscale modeling inventories are needed to accurately reflect the sources that are contributing to ambient levels of the 24-hour PM–10 standard. By design and need, the microscale inventory includes only sources within a small area around a monitor rather than all sources within the entire nonattainment area.

For the attainment demonstration, the Clark County Plan relies upon regional annual and 24-hour emissions inventories associated with a portion of the entire PM–10 nonattainment area titled the ''BLM Disposal Area''. See Clark County Plan, Chapter 3, section 3.3 and Appendix E. All lands controlled by the federal government outside the BLM disposal area are to remain in their native state and the boundary can only be changed by an act of the United States Congress. Approximately 99 percent of the nonattainment area resides within the BLM Disposal Area and nearly all anthropogenic sources within the nonattainment area occur within the BLM Disposal Area, making it the appropriate focus for the attainment demonstration. We address the modeling used in the attainment demonstration later in this notice. The rules adopted by Clark County to address sources within the BLM Disposal Area equally apply to the entire PM–10 nonattainment area.

The Plan contains two 1998 BLM Disposal Area emissions inventories for the annual standard: a valley-wide inventory and a microscale inventory for the area surrounding the J.D. Smith monitoring station, which was the only site that measured a violation of the annual NAAQS. For the 24-hour standard, the Plan contains a base year emissions inventory for the design day (December 21, 1998), which is scaled from the annual valley-wide inventory with additional wind erosion emissions factored in due to specific meteorological conditions.

Clark County also prepared future year PM–10 inventories comparing an ''uncontrolled'' scenario to a scenario assuming application of control measures adopted by Clark County as BACM. The Plan contains uncontrolled 2001 and 2006 annual valley-wide emissions inventories and a 2006 uncontrolled valley-wide 24-hour inventory. Emissions inventories were also developed for each of the five microscale sites. These microscale inventories are specialized modeling inventories and are not intended to satisfy the CAA section 172(c)(3) requirement.[10]

[10] The microscale inventories include only sources within a small area surrounding each monitor rather than all sources within the entire nonattainment area, the requirement in CAA section 172(c)(3).

The following fugitive dust source categories make up 97 percent and 99 percent of PM–10 emissions in the base year annual valley-wide and 24-hour BLM Disposal Area inventories for the Las Vegas Valley, respectively: vacant land, construction, paved roads and unpaved roads. The inventory includes only primary PM–10 as chemical mass balance receptor modeling showed that secondary and condensable particulate formation contribute less than significant amounts to ambient PM–10 concentrations. Clark County Plan, Chapter 4, section 4.2.1.

In our review of the Plan, we found that the emissions estimates for all of the source categories are based on emissions factors and methodologies recommended by EPA, or are derived from a specific study or data collected from a source category in the area (*e.g.*, vacant lots). We propose to find that the inventory projections methodologies and calculations rely upon reasonable assumptions and provide a sufficient basis upon which to assess control measure impacts on future PM–10 air quality in the Las Vegas area. Clark County has also included commitments in the Plan to improve and update the emissions inventories in future years.

E. Contribution of PM–10 Exceedences of Major Sources of PM–10 Precursors

CAA section 189(e) requires BACT to be applied to major stationary sources of PM–10 precursors if these sources contribute significantly to PM–10 exceedences in the area. Clark County determined that stationary sources, including sand and gravel operations, natural gas-fired utility power plants, asphalt concrete plants, industrial processes, and other sources cumulatively contribute less than 1 $\mu g/m^3$ of the design day concentration, placing them below the 5 $\mu g/m^3$ significance threshold for the 24-hour standard. Design day micro-inventory concentrations from stationary source emissions were higher in some cases (3.74 $\mu g/m^3$ and 3.53 $\mu g/m^3$ at the Pittman and Craig Road monitoring sites, respectively), but were still below the threshold of presumed significance for this source category. Therefore, BACT is not required to be applied to stationary sources per CAA section 189(e).

F. Implementation of Best Available Control Measures

CAA section 189(b)(1)(B) requires that a serious area PM–10 plan provide for the implementation of BACM within four years of reclassification to serious. Under our applicable guidance, BACM must be applied to each significant area-

wide source category. Addendum at 42011. As discussed in section III of this preamble, we have established a four-step process for evaluating BACM in serious area PM–10 plans.

Steps 1 and 2: Determination of Significant Sources

The first step in the BACM analysis is to develop a detailed emissions inventory of PM–10 sources and source categories that can be used in modeling to determine their impact on ambient air quality. Addendum at 42012. The second step is to use this inventory in air quality modeling to evaluate the impact on PM–10 concentrations over the standards of the various sources and source categories to determine which are significant.

The development of the detailed emissions inventory is discussed in the preceding section and in the TSD. We propose to find that the baseline emissions inventory contains a sufficient level of detail to enable appropriate evaluation of the Plan's control measures for BACM purposes. The determination of source significance is based primarily on the J.D. Smith annual inventory and the 24-hour micro-inventories at the five representative sites, supplemented by reviews of the 1998 valley-wide 24-hour emissions inventory, the 1998 valley-wide annual emissions inventory, and Chemical Mass Balance modeling. Clark County Plan, Chapter 4, pg. 4–1.

From these evaluations, the Clark County Plan identifies the following sources as significant with respect to the annual standard:

1. Disturbed vacant land/unpaved parking lots
2. Construction (including highway construction)
3. Paved roads
4. Unpaved roads

The same source categories are deemed significant for the 24-hour standard, with the additional category of:

5. Race tracks

Clark County determined that the following source categories are not significant for both standards:

1. Stationary point sources (sand and gravel operations, utilities—natural gas, asphalt concrete manufacture, industrial processes, other)
2. Some stationary area sources (small point sources, fuel combustion sources, residential wood combustion, open burning, farming operations)
3. Nonroad mobile sources (airport support equipment, commercial equipment, construction and mining equipment, lawn and garden equipment, railroad equipment, airport emissions)
4. Onroad mobile vehicle exhaust and other emissions
5. Secondary aerosol particulate

Emissions from the proposed *de minimis* categories are a small percentage (3% collectively) of the total 1998 BLM Disposal Area annual and 24-hour PM–10 emissions inventories. The minimal contribution of the proposed *de minimis* source categories to the inventory supports that, both individually and collectively, they have a minor impact on elevated annual and 24-hour PM–10 levels in the Clark County nonattainment area.

For the 24-hour standard, the Clark County Plan demonstrates that its selection of significant source categories is appropriate by showing that controls on the *de minimis* source categories would not result in attainment of the 24-hour standard by 2001. See Clark County Plan, Chapter 7, section 7.4.

We propose to find that the Clark County Plan has not excluded any source categories that should be considered significant from its list of significant source categories. The Plan presents acceptable modeling to evaluate the impact of various PM–10 sources and source categories on PM–10 levels and to derive a comprehensive list of significant source categories.

Step 3: Identification of Potential BACM

In preparing the list of candidate BACM, Clark County reviewed our guidance documents on BACM, other EPA documents on PM–10 control, as well as PM–10 plans from other serious PM–10 areas in the United States. Clark County also evaluated controls proposed during public comment.

The Clark County plan appropriately screened the list of candidate BACM to eliminate measures that did not apply to significant source categories in the area, or were technologically infeasible for the area because they would not reduce PM–10 emissions. The Clark County Plan also provides cost-effectiveness estimates for each of the candidate BACM.

We propose to find that the Clark County Plan identified and evaluated potential BACM for the Las Vegas area consistent with our guidance. As we will discuss below in our evaluations of the implementation of BACM for each significant source category, we do not believe that the Clark County plan left out any candidate BACM.

Step 4: Implementation of RACM [11] and BACM and Inclusion of MSM for Each Significant Source Category

In the following sections, we review the results of the Clark County Plan's BACM analysis and adopted measures. The same control measures apply to BACM determinations for both the annual and 24-hour PM–10 standards. We also present our evaluation of the Plan's provisions for including MSM alongside our evaluation of BACM implementation for each significant source category.

Clark County adopted sections 90 through 94 and section 0 on November 16, 2000. Sections 90 through 93 were subsequently revised by the DAQM on November 20, 2001. Clark County submitted these revised rules to EPA on October 24, 2002 for our action in place of the sections 90 through 93 adopted on November 16, 2000. These rules address the significant sources identified in the Plan, along with SIP commitments for unpaved roads and unpaved road shoulders contained in Chapter 4 of the Plan.

Clark County has also committed to increase its staffing levels to enhance compliance and enforcement of these rules to assure that the emission reductions necessary for expeditious attainment are achieved. This commitment is an important component of our proposed finding that the Clark County Plan provides for implementation of BACM and inclusion of MSM.

We also have evaluated the rules for enforceability and consistency with applicable CAA requirements for SIP revisions in section 110 and Part D and EPA rulemaking policy.

a. Disturbed Vacant Land

This category includes windblown fugitive dust emissions from disturbed surfaces of vacant land. On vacant land, fugitive dust emissions are caused by virtually any activity which disturbs an otherwise naturally stable parcel of land, including earth-moving activities, material dumping, weed abatement, and vehicle traffic. Wind erosion from disturbed vacant land accounts for 45 percent of total PM–10 emissions in the 1998 24-hour BLM Disposal Area inventory and 39 percent of total PM–10 emissions in the 1998 annual BLM Disposal Area valley-wide inventory,

[11] Because the RACM demonstration is subsumed in the BACM demonstration, a separate analysis to determine if the measures represent a RACM level of control is not necessary. Our proposed approval of the Clark County Plan's provisions relating to the implementation of BACM is also a finding that the plan provides for the implementation of RACM.

making it the largest source of PM–10 in the Las Vegas area.

The suggested measures for controlling emissions from disturbed vacant land fall into one of two categories: preventing motor vehicle disturbance of vacant land, and stabilizing vacant land.[12] We propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for disturbed vacant land including the potential MSM from other States.

Clark County implemented both access prevention and surface stabilization with specific requirements in section 90 ''Fugitive Dust From Open Areas and Vacant Lots''. Section 90 requires prevention of motor vehicles (including off-road vehicles), where there is evidence of such use, on open areas and vacant lots greater than or equal to 5,000 square feet by installation of barriers or other effective traffic control measures and stabilization of motor-vehicle disturbed surfaces on such lots. Also, where 5,000 square feet or more of cumulative disturbed surface exists (from any activity) all disturbed areas must be stabilized using water, dust palliatives or gravel. When discing or blading areas of 5,000 square feet or more, water must be applied before and during operations and the disturbed surface stabilized afterwards.

The requirements apply to public and private vacant land alike. Clark County determined that less than one percent of vacant land within the BLM Disposal Boundary [13] consists of parcels smaller than 5,000 square feet, thus the requirements provide a stringent threshold of applicability. Section 90 contains appropriate performance standards and test methods for surface stability,[14] recordkeeping requirements, and otherwise meets EPA's enforceability criteria.

Clark County has also made a SIP commitment to adopt a requirement for dust management plans on large tracts (*i.e.*, 10,000 acres or more) of government owned land.[15]

Section 90 vacant lot requirements became effective on January 1, 2001. We propose to find that the Clark County Plan provides for the implementation of vacant lot measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 90 requirements are of equivalent or greater stringency than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for disturbed vacant land. We also propose approval of section 90 into the SIP in accordance with CAA section 110 and the requirements of CAA Title I, part D.

b. Unpaved Parking Lots

This category includes emissions from re-entrained road dust from vehicle traffic on unpaved parking lots and windblown dust entrained from the disturbed surface of unpaved parking lots. Windblown emissions from unpaved parking lots are included in the disturbed vacant land category in the 1998 base year valley-wide and BLM Disposal Area emissions inventories. The extent of unpaved parking lots affected by the controls in adopted Rule 92 has not been determined (or credited) on a valley-wide inventory basis,[16] but instead only with respect to the microscale inventories.

There are two principal ways to control emissions from unpaved parking lots, both of which Clark County identified: prohibit unpaved parking lots or stabilize existing lots. We propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for unpaved parking lots including the potential MSM from other States.

Clark County adopted requirements to stabilize existing unpaved parking lots in section 92 ''Fugitive Dust From Unpaved Parking Lots.'' Clark County also adopted a SIP commitment to modify section 92 to prohibit new unpaved parking lots with limited exceptions.[17] Therefore, both potential BACM have or will shortly be adopted.[18]

Section 92 requires that all unpaved parking lots greater than or equal to 5,000 square feet be stabilized by application of paving, dust palliatives, or a combination of dust palliatives in the travel lanes and two inches of gravel. Lots used intermittently (thirty-five days per year or less), must be stabilized according to section 92 standards only on days of use. On days of inactivity, however, such lots are subject to section 90 standards.

The section 92 requirements apply to both public and private unpaved parking lots. The analysis Clark County used to assess the percentage of vacant land parcels smaller than 5,000 square feet in the BLM Disposal Area applies to unpaved parking lots as well. Section 92 contains appropriate performance standards and test methods for surface stability and opacity,[19] recordkeeping requirements, and otherwise meets EPA's enforceability criteria.

Section 92 unpaved parking lot requirements became effective on January 1, 2001. We propose to find that the Clark County Plan provides for the implementation of unpaved parking lot measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 92 requirements are more stringent than those adopted or in practice in other areas. We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for unpaved parking lots. We also propose SIP approval of section 92 per CAA section 110 and Part D.

c. Construction Sites

Sources of fugitive dust emissions at construction sites include land clearing, earthmoving, excavating, construction, demolition, material handling, bulk material storage and/or transporting operations, material track out or spillage onto paved roads (which we have addressed in the paved road section), and vehicle use and movement on site (*e.g.*, the operation of any equipment on unpaved surfaces, unpaved roads and

[12] Constructing windbreaks was also identified but deemed less stringent than surface stabilization. Therefore, the benefits of applying this potential BACM are subsumed in the more stringent emission reductions associated with surface stabilization. In addition, Clark County identified weed abatement on vacant land as a separate category. Since this pertains to ''surface stabilization'' we include it under that category; however, weed abatement by discing and blading also generates emissions as the activity is being conducted, therefore, Clark County has adopted separate requirements for weed abatement in its vacant lot rule.

[13] We note that section 90 requirements apply throughout the entire PM–10 nonattainment area.

[14] Standards include a visible crust determination, 20% cover of nonerodible elements, or a threshold friction velocity (corrected for nonerodible elements) of 100 cm/sec or higher.

[15] Clark County submitted a SIP amendment that establishes a revised deadline of March 31, 2003 for the section 90 and other rule revisions.

[16] See Clark County Plan, Chapter 4, subsection 4.5.2.2.5.

[17] Clark County submitted a SIP amendment that establishes a revised deadline of March 31, 2003 for the section 92 and other rule revisions.

[18] Adoption of a requirement prohibiting new unpaved parking lots, in addition to the section 92 stabilization requirements, collectively fulfill BACM and MSM. However, since the section 92 surface stabilization requirements apply to both new and existing unpaved parking lots, the requirement that new lots be paved provides only incremental emission reductions beyond measures already adopted and, therefore, is not critical in our determination that measures for this source category have been adopted as expeditiously as practicable.

[19] Both a 20% opacity standard according to a modified EPA Reference Method 9 and a silt content standard of 8% or alternatively, a silt loading standard of 0.33 oz/sq. ft., apply.

unpaved parking areas). Windblown emissions from disturbed areas and inactive storage piles on construction sites are also a source of PM–10. Construction operations, which are mostly earthmoving, represent approximately 37 percent of the 24-hour BLM Disposal Area emissions (not including trackout emissions).

The suggested measures in the Clark County Plan for controlling emissions from constructions sites include a detailed list of controls encompassing a great variety of dust-generating activities, performance standards, enforcement-related measures,[20] and new measures not implemented in other areas. The measures considered include all sources of active dust generation and windblown dust on construction sites. We propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for construction sites emissions including the potential MSM from other States.

Clark County adopted requirements pertaining to construction sites in Section 94 ''Permitting and Dust Control for Construction Activities'' on November 16, 2000. As part of this action, Clark County also adopted a ''Section 94 Handbook,'' along with relevant tables of contents, definitions, articles, tables, indexes, examples and appendices.[21] Together these documents make up the required control measures applicable to construction sites. Section 94 establishes the basic requirements for construction site dust control permits and other standards while the Section 94 Handbook lays forth more specific requirements for each dust-generating source.

Dust control permits are required prior to soil disturbance for all sites greater than ¼ acre, mechanized trenching greater than 100 feet in length, and mechanical demolition of structures greater than 1,000 square feet. However, all sites with construction activities regardless of size are subject to the requirements of section 94 and the Section 94 Handbook. Dust control permits must contain a ''Dust Mitigation Plan'' that employs the Section 94 Handbook Best Management Practices (BMPs). The Section 94 Handbook requirements are not only activity-specific and designed to be placed into dust control permits in a phase-specific manner, but are also specific to the type of soil at a particular site or location and the soil's potential to emit fugitive dust. Therefore, each Dust Mitigation Plan must incorporate the appropriate BMPs per the Section 94 Handbook according to soil type parameters.[22] Sites 10 acres or greater must provide a more detailed project description and site plan according to a ''Site Specific Dust Mitigation Plan''.

The Section 94 Handbook establishes a specific performance standard (*i.e.*, Control Requirement) that must be met for each identified construction activity.[23] Multiple Control Requirements apply for each construction activity. A menu of control measure options is provided, one or more of which must be specifically identified in the Dust Mitigation Plan to meet each applicable Control Requirement for the activity. The control measures identified in the Dust Mitigation Plan are subject to review and approval by the DAQM as part of the dust control permit.

Specific requirements include a 20 percent opacity standard for active earthmoving operations and construction traffic. Also, all construction activities are prohibited from creating a visible plume that extends more than 100 yards from the point of origin. Construction site trackout is addressed by both a requirement to install and maintain trackout control devices at all traffic access/exit points and a requirement that trackout be cleaned up immediately (within one hour of discovery) if it extends a cumulative distance of 50 feet or more. In addition, all trackout must be cleaned up by the end of the work day or evening shift. To prevent emissions during bulk material transport and handling, truck loads must be covered on public roads and a 20 percent opacity limit applies during truck loading and unloading. Truck loads of bulk materials on site must either be covered, maintain three to six inches of freeboard, or maintain optimum moisture content of soils. All inactive disturbed soil areas must meet surface stabilization standards, including stockpiles and parking areas.[24] Unpaved haul roads must comply with both a 20% opacity standard [25] and a surface stabilization standard.[26] In high wind conditions, owners/operators must cease all construction activities if fugitive dust exceeds 20 percent opacity but must continue operation of water trucks and pulls except under specific circumstances. Sites with greater than 50 acres of actively disturbed soil are required to employ a responsible person to monitor dust control at the site.[27]

Section 94 and the Section 94 Handbook and other documents adopted by reference contain appropriate performance standards and test methods for opacity and surface stability, recordkeeping requirements, and otherwise meet EPA's enforceability criteria. Although the opacity standard per the test method included in section 94 is the best currently available to assess the opacity of emissions from the variety of construction activities generating fugitive dust, it may not be sufficient in all field circumstances to control intermittently-occurring dust plumes to BACM levels. Therefore, Clark County has adopted a SIP commitment to fund additional research to develop an acceptable alternative test method and revise section 94 accordingly. See Chapter 4 of the Plan, section 4.8.2.7. We consider this commitment as factoring into our determination that the Plan provides for BACM/MSM.

Section 94 construction site requirements became effective on January 1, 2001. We propose to find that the Clark County Plan provides for the implementation of construction site measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 94 and section 94 Handbook requirements are of equivalent or greater stringency than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the

[20] We do not consider improved enforcement a BACM but rather a method of implementing BACM.

[21] The Section 94 Handbook and associated documents are explicitly adopted as part of section 94 per subsection 94.3.1 of the rule.

[22] Five soil type categories are included that take into account both silt content and optimum moisture content: high, moderately high, moderately low, low and slight. The high and moderately high soils generally require that a surfactant mixture with water or tackifyer mixture with water, respectively, be applied for effective dust control.

[23] Construction activities with specific BMPs include trenching, truck loading, screening, landscaping, paving/subgrade preparation, disturbed inactive surfaces, track out control, staging, equipment, and material storage areas, construction traffic, crushing, abrasive blasting, soil and rock blasting, stockpiles, importing bulk materials, backfilling, clearing and grubbing, clearing forms, cut and fill and demolition.

[24] Surfaces must comply with a visible crust standard per the test method in section 94 but may also comply with other surface stability standards in section 90.

[25] A modified EPA Reference Method 9 applies, found in section 91.

[26] A 6 percent silt content and/or 0.33 oz per square foot silt loading standard applies.

[27] This requirement was newly developed by Clark County and serves the dual purpose of improving compliance of larger sites by active monitoring of dust control-related efforts, but also encourages owners/operators to keep the total amount of disturbed surface under 50 acres as a preventative measure.

implementation BACM and for the inclusion of MSM for construction sites. We also propose SIP approval of section 94 and the section 94 Handbook and referenced documents per CAA section 110 and part D.

d. Paved Road Dust

Paved road dust is fugitive dust that is deposited on a paved roadway and then re-entrained into the air by the action of tires grinding on the roadway. Dust can be deposited on the roadway from being blown onto the road from disturbed areas, tracked onto the road from unpaved shoulders, unpaved roads, or other unpaved access points, stirred up from unpaved shoulders by wind currents created from traffic movement, spilled onto the road by haul trucks, and carried onto the road by water runoff or erosion. Paved road dust constitutes 26 percent of the 1998 valley-wide annual BLM Disposal Area emissions, thus is the second largest source of valley-wide PM–10 in the Las Vegas area. Paved road dust accounts for 13 percent of the overall 24-hour BLM Disposal Area 1998 inventory.

The suggested measures for controlling emissions from paved road dust fall into two categories: Preventing deposition of material onto a roadway, and cleaning material off the roadway.[28] The Clark County Plan includes ten potential BACM for paved road dust that fall under one of these two categories. We believe this list is complete and propose to find that the Clark County Plan evaluates a comprehensive set of potential controls for paved road dust including the potential MSM from other States.

Clark County adopted requirements for paved road shoulders and PM–10 efficient street sweeping requirements in section 93 ''Fugitive Dust from Paved Roads and Street Sweeping Equipment''. Clark County adopted SIP commitments to stabilize existing unpaved road shoulders and require use of vacuum crack seal equipment. See Clark County Plan, Chapter 4, sections 4.8.3.2 and 4.8.2.9.[29] Measures to prevent construction site trackout onto paved roads from truck tires and material transport are included in section 94 and the section 94 Handbook (construction activity regulations). For other measures [30], Clark County provided documentation of ongoing programs in place.[31]

The paved road measures relied upon for emissions reductions towards demonstrating attainment include stabilizing unpaved road shoulders, preventing trackout from construction sites, and reducing deposition from other fugitive dust sources subject to control per sections 90 through 94. The remaining measures are either already factored into the baseline or are not credited with emissions reductions towards the attainment demonstration.[32]

Section 93 requires owners/operators using street sweeping equipment or services on paved roads or parking lots to acquire or contract to acquire only certified PM–10 efficient street sweeping equipment [33] after January 1, 2001. We note this requirement applies to both private operators and government agencies.

For new or modified road shoulders, section 93 requires four feet of paved or stabilized shoulder on each side of the paved travel section or construction of curbing adjacent to the paved travel lane.[34] Medians must also be stabilized.

For existing unpaved road shoulders, section 93 requires stabilization within 365 days following initial discovery that the road fails to meet the stabilization standards and other requirements that apply to new/modified paved road shoulders. The stringency of this provision is necessarily enhanced by the SIP commitment in the Plan which lays forth the program and definitive dates by which all unstabilized shoulders will be identified and stabilized by public agencies in the Valley. Clark County indicates that shoulder improvements will be prioritized by each entity for their respective jurisdictions based upon emissions estimates. To implement the program, Plans will be completed by February 15, 2002, and at a minimum, funds will be obligated to improve 33 miles of paved road shoulders by the end of 2003, with all shoulders to be stabilized by the end of 2006. Annual updates on the progress of stabilizing shoulders will be submitted to Clark County and EPA. In a June 28, 2002 letter, the DAQM indicates that the respective public entities have submitted initial plans for stabilizing shoulders and initiated programs to begin stabilization.

Section 93, paved road requirements, became effective on January 1, 2001. The SIP commitment by governmental entities to stabilize 33 miles of unpaved shoulders by the end of 2003 and all shoulders by the end of 2006 allows time for public works agencies to complete an inventory of the unpaved shoulders in their respective jurisdictions and adopt schedules under capital improvement programs to stabilize shoulders each year using Congestion Management Air Quality (CMAQ) funds. Other measures have on-going implementation schedules because they are part of an on-going capital improvement program, *e.g.*, storm water drainage projects. Therefore, we propose to find that the Clark County Plan provides for the implementation of paved road measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 93 requirements and SIP commitments contained in the Plan are of equivalent or greater stringency than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for paved road dust.

e. Unpaved Roads

This category includes re-entrained dust from vehicle travel on unpaved roads and windblown emissions from unpaved roads. There are three categories of unpaved roads in the Clark County nonattainment area: Publicly-owned/maintained roads, privately-owned roads, and unpaved haul/access roads associated with construction sites or industrial facilities. We have addressed the latter category in the discussion of construction site measures (section IV.D.3.c) of this document.

There are three ways to control fugitive dust emissions from unpaved roads: surface treatment to reduce dust from unpaved roads and alleys, traffic reduction/speed control plans for unpaved roads, and prohibition of

[28] Reductions in vehicle miles traveled and vehicle trips are also candidate transportation control measures (TCMs) that could have positive impacts on reducing paved road dust. However, these measures are more appropriate for areas addressing significant on-road mobile source emissions and would not impact paved road dust on the same magnitude as measures directed towards preventing or removing deposition. TCMs are separately addressed and included in Clark County's Carbon Monoxide Plan, adopted on August 1, 2000.

[29] Clark County submitted a SIP amendment that establishes a revised deadline of March 31, 2003 for the section 93 and other rule revisions.

[30] Prevention of storm water drainage deposits, cleanup of material spills and erosion-caused deposits, and routine sweeping of paved roads.

[31] See Clark County Plan, Appendix J and Chapter 4, pg. 4–69.

[32] For example, a large portion of the publicly-owned street sweeping fleet already consisted of PM–10 efficient street sweepers in 1998 and routine sweeping programs were already in place.

[33] This refers to a street sweeper which has been certified by the South Coast Air Quality Management District (SCAQMD) to comply with the performance standards in SCAQMD's Rule 1186 according to test methods specified in Rule 1186.

[34] Clark County has made a SIP commitment to strengthen this provision to provide for eight feet of stabilized shoulder adjacent to the paved travel section on roads with 3,000 vehicles per day or more. The new SIP commitment date of March 31, 2003 applies per Clark County's SIP amendment.

unpaved haul roads. All three are identified and evaluated in the Clark County Plan. We believe this list is complete and propose to find that the Clark County Plan evaluates a comprehensive set of potential BACM and MSM for unpaved roads.

Clark County did not implement traffic reduction/speed control on public and private roads in the Valley.[35] This is because the County determined that reducing traffic on public and private unpaved roads is not as stringent a measure as paving or other means of surface stabilization. Speed control is difficult to enforce compared to road paving, which can be readily verified and results in greater emissions reductions. Thus, the benefits of applying this potential BACM are subsumed in the more stringent emission reductions associated with surface stabilization.

Clark County adopted requirements to stabilize existing unpaved roads and alleys and to prohibit new unpaved roads in public thoroughfares in section 91 ''Fugitive Dust From Unpaved Roads, Unpaved Alleys and Unpaved Easement Roads.'' Also, Clark County adopted a SIP commitment for County and City Public Works agencies to pave unpaved roads subject to section 91.[36]

Section 91 requires all existing unpaved roads that receive 150 vehicle trips per day or more to be paved or treated with dust palliatives on the following schedule: ⅓ of the total by June 2001, two-thirds of the total by June 2002, and any remaining roads by June 1, 2003. Section 91 prohibits construction of new unpaved roads or alleys in public thoroughfares after June 22, 2000 unless the unpaved road is an interim component of an active paving project.

Section 91 requirements apply to both public and private roads. Clark County estimates that approximately 64 miles of the 259-mile total base year inventory of publicly-owned and maintained unpaved roads have 150 or more average daily vehicle trips (ADT). The unpaved roads inventory was developed by the respective Public Works departments after extensive review of the existing road network. Given that higher ADT unpaved roads proportionately contribute greater emissions than lower ADT roads, the 64 miles constitute 66% of emissions from the total inventoried road network. The SIP commitment for unpaved roads made by County and City Public Works agencies not only goes beyond the section 93 requirements in that it ensures roads will receive the maximum emissions reductions possible through paving, but further enhances coverage in that the City of Las Vegas makes an additional commitment to pave all unpaved roads within its jurisdiction by the end of 2006. We also note that the SIP commitment concerning paved road shoulders [37] indicates that shoulder improvements and road paving for unpaved roads with less than 150 ADT will be prioritized by each entity for their respective jurisdictions based upon emissions estimates. Thus, road paving efforts by jurisdictions may very well go beyond the requirements in section 91 depending on the availability of CMAQ dollars. Section 91 contains specific reporting requirements for the responsible jurisdictions and the SIP commitment for unpaved roads provides for annual progress updates to be provided to the DAQM and EPA.

While the miles of privately owned unpaved roads have not been fully inventoried in detail, a total of 45 miles of private roads were identified by various municipalities and the County, none of which were determined to have traffic volumes greater than 50 ADT. Clark County included a SIP commitment in the Plan to develop an improved inventory of both public and private unpaved roads.[38]

Section 91 also contains requirements that address the prospect of vehicle traffic increases on unpaved roads that are currently below the 150 ADT threshold but in the future exceed it. Any existing unpaved roads which equal or exceed 150 ADT after June 1, 2003 are subject to control according to section 91 within 365 calendar days following initial discovery that vehicular traffic equals or exceeds 150.

Section 91 contains appropriate performance standards and test methods for surface stability and opacity,[39] recordkeeping requirements, and otherwise meets EPA's enforceability criteria.

Section 91 unpaved road requirements prohibit new unpaved roads as of June 22, 2000. Clark County indicates that the CMAQ funding obligated by the responsible government agencies (totaling over $25 million) will support completing approximately one-third of the total paving requirement in section 91 for each year from 2001 to 2003.[40] Moreover, we note in a June 28, 2002 letter from the DAQM that the responsible jurisdictions have exceeded the section 91 required one-third increment of road paving by June 2001 and have reported paving 86 percent, or a total of 55 of the 64-mile public road inventory receiving 150 ADT or more. This demonstrates the commitment of Clark County governmental entities to implement control measures expeditiously. We propose to find that the Clark County Plan provides for the implementation of unpaved road measures as expeditiously as practicable, consistent with our proposed MSM policy.

For the MSM analysis, Clark County demonstrated that the section 91 requirements and SIP commitments for unpaved roads are equally or more stringent than those adopted or in practice in other areas.

We, therefore, propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for unpaved roads. We also propose SIP approval of section 91 per CAA section 110 and part D.

f. Race Tracks

Race track emissions are both actively generated from use by offroad vehicles, *e.g.*, dirt bikes and all-terrain vehicles (ATVs), and windblown from disturbed surfaces following use. Clark County determined that race track emissions are only significant with respect to the 24-hour standard. Race track emissions that were found to have significant impacts at two micro-inventory sites were associated with unauthorized ATV use on a vacant parcel.[41]

Clark County did not prepare a separate BACM analysis for race tracks. Rather, Clark County implements its strategy for race tracks through section 90 controls for disturbed vacant land and open areas. We note that there are three potential BACM for control of dirt race tracks: Prohibit race tracks, treat the surface of race tracks with dust suppressants or palliatives, and establish wind breaks around the circumference of tracks. Of these potential BACM, Section 90 controls address the first two. Establishing wind breaks has not been adopted, but this measure is not as stringent as prohibiting race tracks and surface treatment of disturbed areas.

Clark County determined that section 90 requirements effectively prohibit dirt race tracks because it is not possible to

[35] However, traffic reduction/speed control is included in the Section 94 Handbook as a BMP for unpaved haul/access construction site roads.

[36] See Chapter 4, section 4.8.3.1 of the Plan.

[37] See Chapter 4, section 4.8.3.2 of the Plan.

[38] See Chapter 4, section 4.8.2.3 of the Plan.

[39] Where paving is not conducted (this would only apply to roads that are not included in the SIP commitment by Public Works entities), both a 20% opacity standard according to a modified EPA Reference Method 9 and a silt content standard of 6% or alternatively, a silt loading standard of 0.33 oz/sq. ft., apply.

[40] See Chapter 7, pg. 7–4 of the Plan.

[41] *See* Chapter 4, pg. 4–81 of the Plan.

operate off-road vehicles, including dirt bikes and ATVs, on open areas/vacant lots and remain in compliance with the regulation. Where motor vehicle trespass is occurring on vacant lots greater than 5,000 square feet, owners must take steps to prevent trespass and stabilize the surface. Even if motor vehicle use is authorized, where over 5,000 cumulative square feet of surface has been disturbed, owners/operators must apply dust palliative (other than water) or gravel. These requirements would apply to any public or private lands where offroad racing occurs.

The one public entity in Clark County that can effectively authorize use of public land for offroad racing events is the Bureau of Land Management. Clark County indicates that BLM is currently working to establish offroad racing courses outside the nonattainment area. The DAQM's policy prohibiting issuance of permits for offroad race tracks within the nonattainment area is described in a letter dated September 5, 2002 from the DAQM to the BLM and in letters from the DAQM to other public agencies dated September 9, 2002.

Clark County did not conduct a MSM evaluation specific to race tracks. Rather, the MSM evaluation for section 90 applies. We propose to find that the Clark County Plan provides for the implementation of BACM and for the inclusion of MSM for race tracks.

g. Section 0

Section 0 was revised by Clark County at the same time sections 90 through 94 were originally adopted (November 16, 2000). The section 0 definitions that concern fugitive dust sources are integrally linked to the requirements found in sections 90 through 94. However, section 0 also contains definitions that are not pertinent to sections 90 through 94. For the purposes of this action, we have only evaluated the definitions concerning fugitive dust sources per section 90 through 94 requirements and are proposing to approve only these sections into the SIP, rather than the entire section 0.

The individual sections of section 0, November 16, 2000, we are proposing to approve into the Nevada PM–10 SIP include the following:

Section 0.25 ''Best Management Practices''
Section 0.33 ''Commercial and Residential Construction''
Section 0.36 ''Construction Activity''
Section 0.37 ''Control Measure''
Section 0.43 ''Disturbed Surface Area''
Section 0.45 ''Dust Palliative''
Section 0.46 ''Dust Suppressant''
Section 0.47 ''Easement''
Section 0.48 ''Easement Holder''
Section 0.51 ''Emergency''
Section 0.58 ''EPA or Administrator''
Section 0.65 ''Flood Control Construction''
Section 0.70 ''Fugitive Dust''
Section 0.81 ''Hearing Officer''
Section 0.84 ''Highway Construction''
Section 0.110 ''Nonroad Easement''
Section 0.111 ''Normal Farm Cultural Practice''
Section 0.114 ''Offroad Vehicle''
Section 0.117 ''Open Areas and Vacant Lots''
Section 0.120 ''Owner and/or Operator''
Section 0.127 ''Pave''
Section 0.132 ''PM–10 Nonattainment Area''
Section 0.133 ''PM–10''
Section 0.140 ''Public Road''
Section 0.141 ''Reclaimed Water''
Section 0.147 ''Road Easement''
Section 0.162 ''Trench''
Section 0.164 ''Unpaved Parking Lot''
Section 0.166 ''Vacant Lot''

The current Nevada SIP contains a definitions rule titled ''Section 1—Definitions'' submitted on November 17, 1981 and approved into the SIP by EPA on June 21, 1982. Our proposed incorporation of the specified section 0 definitions into the SIP would upgrade the SIP by adding several new definitions and by replacing two of the existing section 1 definitions. These two definitions include section 0.70 ''Fugitive Dust'' and section 0.114 ''Offroad Vehicle'', which would replace subsection 1.35 and subsection 1.64 of section 1, respectively.

G. Applicable SIP Rules

In addition to section 1, the applicable SIP-approved fugitive dust rules that apply in Clark County include section 41 ''Fugitive Dust'' (submitted on July 24, 1979 and approved by EPA on August 27, 1981) and section 17 ''Permission to Disturb Topsoil'' (submitted on July 24, 1979 and approved by EPA on August 27, 1981). Revisions to section 17 were submitted on November 17, 1981 and approved by EPA on June 18, 1982.

We are proposing to revise the Nevada PM–10 SIP to incorporate sections 90, 91, 92, 93 (as adopted on November 20, 2001) and section 94 (including the Section 94 Handbook and other referenced documents) (as adopted on November 16, 2000) of the Clark County Regulations. We are proposing to replace SIP-approved Clark County section 17. We are also proposing to add certain portions of Section 0 (as adopted on November 16, 2000) to the existing SIP-approved section 1, and replace two definitions in section 1, as previously identified in this notice.

CAA section 110(l) prohibits approval of SIP revisions that would interfere with any applicable requirement concerning attainment and RFP or any other applicable requirement of the Act. As discussed in other sections of this document, we are proposing to approve the expeditious attainment and RFP demonstrations in the PM–10 State Implementation Plan for Clark County. These demonstrations are in large part dependent on approval of sections 90, 91, 92, 93, and 94 (including Handbook) and Clark County SIP commitments. Therefore, our proposed approval of these rules and SIP commitments will not adversely affect the Plan's provisions for expeditious attainment and RFP. These SIP revisions also satisfy all other applicable CAA requirements including implementation of BACM and the inclusion of MSM.

H. General SIP Requirements and Enforcement of Fugitive Dust Rules

Section 110(a)(2)(E)(i) of the Clean Air Act requires that the implementation plan provide necessary assurances that the State (or the general purpose local government) will have adequate personnel, funding and authority under State law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (51.230–51.232) and for resources in 40 CFR 51.280.

States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal.

Section 110(a)(2)(C) of the Act requires SIPs to include a program to provide for the enforcement of SIP measures. The implementing regulation for this section is found at 40 CFR 51.111(a) and requires control strategies to include a description of enforcement methods including (1) procedures for monitoring compliance with each of the selected control measures, (2) procedures for handling violations, and (3) the designation of the agency responsible for enforcement.

Section 110(a)(2)(E)(iii) of the Act requires SIPs to include necessary assurances that where a State has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring

adequate implementation of the such plan provision.

With respect to CAA section 110(a)(2)(E)(iii), the State of Nevada has ultimate responsibility for ensuring the adequate implementation of the Clark County air quality program according to NRS 445B.520. This statute allows the State Environmental Commission to supersede a County's program when the Commission determines that a local air quality program is inadequate.

The principal control measures in the Clark County Plan are the adopted requirements in sections 90 through 94 and the Plan's SIP commitments for unpaved shoulders and roads.

1. Staffing

Clark County has committed to increase its enforcement staffing and thus enhance enforcement efforts. See Chapter 4, section 4.8.1 and appendix H, Resolution 02–00, July 27, 2001, of the Clark County Plan. Specifically, Clark County committed to hire 15 additional staff by December 31, 2001 to implement and enforce sections 90 through 94, including several enforcement officers, clerical and other support positions. Prior to the fulfillment of this SIP commitment, compliance for fugitive dust sources (per sections 17 and 41 of the Clark County Regulations) was being handled by 11 people total, seven (7) of which were field enforcement officers conducting inspections.

The DAQM has provided us with the status of its SIP commitments.[42] First, the DAQM met its commitment by hiring 15 new staff into the compliance division, 12 of which were hired as field enforcement officers to conduct inspections and handle cases for construction sites and vacant lots. The DAQM then exceeded its SIP commitment by hiring an additional seven (7) field enforcement officers in 2002. The Compliance Division now consists of a total of 44 positions, with 22 field enforcement officers who spend approximately 90 percent of their time on fugitive dust issues. The increased level of effort specifically being targeted towards fugitive dust sources is evidenced by the significant number of inspections and corrective action orders concerning fugitive dust sources in 2001 and 2002, which we address in subsequent paragraphs.

We address below other program areas that are key to improving compliance and which we believe form a solid program for the effectiveness of the County's efforts to control fugitive dust.

2. Inspection Program

Clark County's enforcement staff utilizes the county Geographic Information System (GISMO) to obtain detailed aerial photographs to locate and identify large parcels of vacant land to inspect and characterize. The DAQM continues to expand the existing vacant land program by identifying and systematically inspecting the problem areas and the larger parcels.

In calendar years 2001 and 2002 (as of September) combined, Clark County has conducted over 4,000 vacant land inspections. The Compliance Division has a member on staff who coordinates all activities and concerns with two government agency large vacant landowners, the Bureau of Land Management and the Bureau of Reclamation—in order to ensure close cooperation with these agencies.

In calendar years 2001 and 2002 (as of September) combined, Clark County has conducted over 5,000 construction site inspections. Complaints are given priority for inspection; however, enforcement officers also inspect construction sites within their assigned area on a routine basis, including non-permitted construction activities as they are encountered in the field.

3. Enforcement Program

Clark County relies upon two options for handling noncompliant sources: issuing a Corrective Action Order (CAO) or a Notice of Violation (NOV). In 2001, the County issued 1,316 CAOs and as of September 2002 has issued 1,775 CAOs. In 2001, the County issued 57 NOVs and as of September 2002 has issued 133 NOVs. The penalties assessed for the two years combined amount to $719,372. CAOs are generally written for infractions that are not substantial enough to warrant a NOV, allowing source owners/operators a first-time chance to comply. NOVs are issued for more serious violations. Should owners/operators fail to comply with a CAO, it becomes a NOV with associated penalties.

Section 7 provides that the Hearing Board Officers be selected by the District Board of Health and have the authority to levy penalties for alleged violations in accordance with section 9 of Clark County regulations, which contains the minimum penalties for violations of fugitive dust requirements. The minimum penalty for limiting visible emissions is $2,000. The minimum penalty for not complying with other control measure provisions is $1,000. Minimum penalties for failing to comply with administrative requirements related to permit conditions is $500 and $250 for other administrative requirements. Clark County compared these minimum penalties for dust violations to those of other air regulatory agencies and found that they were among the highest in the nation.

4. Public Outreach/Education

Public outreach and education consists of staff training, educating the regulated parties, developing good working relationships with other involved parties such as the cities, and making the program more understandable. Increased education of both inspectors and the regulated industry increases compliance.

Public outreach efforts in which Clark County has engaged to improve compliance for construction sites include publishing and distributing a manual that summarizes the section 94 and section 94 Handbook requirements in an easy-to-comprehend format. Also, dust control classes and educational workshops are regularly offered by the DAQM's Compliance Division. The construction site superintendent or designated on-site representative and water truck and water pull drivers for each construction project are required per section 94 to have successfully completed a Dust Control Class and all individuals required to attend must successfully complete the Dust Control Class at least once every three years. In addition, as of 2002, the DAQM has conducted a special training effort per the section 94 requirement for a responsible person to monitor dust (*i.e.* ''Dust Control Monitor'') on sites with more than 50 acres of disturbed surface. To date, two Dust Control Monitor classes have been held with over 90 participants.

In order to increase awareness among vacant lot owners/operators of the disturbed vacant lot requirements, Clark County prepared and distributed a brochure summarizing the section 90 requirements to over 40,000 vacant landowners.

5. Program Evaluation and Tracking

Clark County tracks the number of inspections, CAOs, NOVs, penalties assessed and penalties collected for fugitive dust and other sources and provides quarterly reports containing this information to EPA.

Clark County tracks progress of government agencies on their unpaved road and paved road SIP commitments through a PM–10 SIP Implementation Working Group and an Unpaved Road Ad Hoc Committee. These groups are

[42] See June 28, 2002 letter and attached RFP Report and October 1, 2002 letter from the DAQM to EPA.

comprised of DAQM planning and compliance staff and staff from the County and City public works agencies. Unpaved road paving is documented using an extranet site and the unimproved shoulders program will be reviewed through submittal of annual reports to the DAQM.[43] Also, the Public Works Departments in Clark County routinely track paved road performance and maintenance by checking the condition of paved roads in their respective jurisdictions.

6. Conclusion

We propose to find that the Clark County PM–10 Plan adequately provides for the enforcement of the principal measures relied on for attainment and that Clark County has provided adequate descriptions of its enforcement methods as required by our regulations.

We also propose to find that the implementing agencies for the Clark County Plan have adequate resources for implementing their respective commitments that are included in the submitted Plan and that the Plan adequately describes the resources that are available or will be available to the State and local agencies to carry out the Plan, both now and over the next 5 years.

I. Demonstration of Attainment and Attainment Date Extension

The Clark County Plan contains an analysis that demonstrates attainment of the annual PM–10 standard by December 31, 2001. Clark County predicted that an annual reduction of 5.66 percent, equivalent to 9,657 tons valley-wide and 303 tons for the J.D. Smith micro-inventory area, is needed to attain the annual 50 μg/m^3 standard, given an estimated uncontrolled concentration of 53 μg/m^3. The valley-wide rollback modeling predicts annual PM–10 concentrations to be 46.2 μg/m^3 in 2001. The corresponding microinventory projection for J.D. Smith, the exceeding site, is 48.5 μg/m^3, also less than 50 μg/m^3. Together, these demonstrate attainment of the annual PM–10 standard by 2001. We propose to find this demonstration adequate. The adequacy of the demonstration is further supported by information provided by the DAQM to EPA [44] indicating that the three-year annual average (1999–2001) of the microscale sites is below the 50 μg/m^3 standard.

Clark County has requested an extension of the attainment date for the 24-hour 150 μg/m^3 PM–10 standard. Section 188(e) of the Act allows us to extend the attainment date for a serious area for up to five years beyond 2001 if attainment by 2001 is impracticable. However, before we may grant an extension of the attainment date, the State must first:

1. Apply to us for an extension of the PM–10 attainment date beyond 2001,

2. Demonstrate that attainment by 2001 is impracticable,

3. Have complied with all requirements and commitments applying to the area in its implementation plan,

4. Demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state and/or are achieved in practice in any state and are feasible for the area, and

5. Submit a demonstration of attainment by the most expeditious alternative date practicable.

We evaluate the Clark County serious area plan's compliance with each of these requirements below.

1. Apply for an Extension

The documentation supporting Clark County's extension request is found in Chapter 7 of the Plan. This extension request is an integral part of the Clark County Plan and was subject to public hearing along with the rest of the plan, including the demonstration that the area will attain the 24-hour standard by the earliest alternative date practicable.

2. Demonstrate the Impracticability of Attainment by December 31, 2001

Clark County's determination that demonstrating attainment of the 24-hour standard by 2001 is impracticable is primarily based upon the need for increased enforcement staffing, which could not be completed until the end of 2001. Clark County conservatively assumes that the rule effectiveness of its regulations in 2001 is half of what it will need to be in 2006 to demonstrate attainment of the 24-hour standard.

Also, with respect to the unpaved roads schedule, Clark County indicates that the maximum benefit that will be realized at the end of 2003 from the appropriated CMAQ funding cannot practicably be achieved earlier due to funding limitations each year. Notwithstanding, we note from the DAQM's June 2002 RFP Report that the responsible entities have exceeded the Section 91 required 33 percent paving of roads subject to the rule by 2001 and reported paving 86 percent, or a total of 55 of the 64 mile inventory of unpaved roads with 150 vehicle trips per day.

With respect to improvements to paved road shoulders, Clark County has committed to stabilize 33 miles of paved road shoulders by the end of 2003 using appropriated CMAQ funds and all shoulders by 2006. The remaining shoulders have a later implementation date given that new CMAQ funds will need to be appropriated and first committed towards the carbon monoxide transportation demand management program. Thus, earlier implementation would be impracticable.

The modeled valley-wide 24-hour value for 2001 is 209 μg/m^3. Although this is a significant reduction from the projected design day value of 281 μg/m^3, it still falls far short of the 150 μg/m^3 standard.

Thus, we propose to find that Clark County has demonstrated the impracticability of meeting the 24-hour standard by 2001.

3. Complied With Commitments and Requirements in the SIP

All measures upon which Clark County is relying to meet the applicable CAA requirements for a Serious Area PM–10 plan are included or referenced in the current June 2001 Plan, as amended by Clark County in November 2002.

4. Include the Most Stringent Measures

Clark County identified candidate MSM in the context of its analysis to identify potential BACM, generally finding that control measures being implemented in other PM–10 serious nonattainment areas in the western U.S. were the most stringent controls implemented by others for the types of fugitive PM–10 sources requiring control in the Las Vegas Valley.

In the Clark County Plan, after a comprehensive list of candidate MSM was developed, each measure was screened against the corresponding Clark County measure to identify those with more restrictive emission limitations, more extensive lists of affected sources, fewer exemptions, and/or one or more substantive regulatory provisions not found in the Clark County measure. Clark County includes a measure-by-measure MSM comparison in Chapter 6 of the Plan.

Based on our analysis of the Clark County Plan, we propose to find that it demonstrates to our satisfaction inclusion of the most stringent measures that are included in the implementation plan of any State, or are achieved in practice in any State, and can be feasibly implemented in the Clark County area.

[43] Appendix L, pg. L–12 of the Plan.

[44] June 28, 2002 letter from the DAQM to EPA with attached June 2002 Reasonable Further Progress Report.

5. Demonstrate Expeditious Attainment

For the reasons discussed below, we propose to find that the Clark County Plan demonstrates attainment by the earliest date practicable after December 31, 2001 as required by CAA section 189(b)(1)(A)(ii). We also propose to find that: The attainment demonstration relies on control measures that either are approved or have been proposed for approval and meet our SIP enforceability criteria; the emissions estimates credited to these measures in the attainment demonstration are reasonable; and the measures are being implemented on a schedule that is as expeditious as practicable and will result in attainment by the earliest practicable date.

a. Air Quality Modeling

The attainment demonstration for the 24-hour standard in the Clark County Plan is divided into two parts, a microscale analysis and a regional analysis. The microscale part evaluates 24-hour exceedences at five monitoring sites in the Las Vegas. The regional part evaluates 24-hour levels throughout the rest of the Clark County nonattainment area.

Clark County relies upon an emissions ''rollback'' model for the attainment demonstrations. EPA's guidelines [45] allow the need for case-by-case approaches in circumstances when recommended dispersion models are not available or applicable and where area sources are the predominant component of PM–10. To predict future concentration, the current concentration is reduced or ''rolled back'' by the same fractional amount that emissions are reduced. In recognition of the special characteristics of fugitive dust-dominated areas, we believe an attainment demonstration based on proportional rollback of one or more microinventories is a reasonable approach and is consistent with EPA guidance, as long as the microinventory areas are representative of worst case conditions, and the resulting emission controls are applied throughout the area.

We have evaluated the five microinventory areas mentioned previously in this document and find that they contain varying source category mixes and span a range of conditions that occur in the Las Vegas Valley. By showing that the chosen microinventory areas are representative of conditions leading to PM–10 NAAQS exceedences, and by then applying the controls shown to be needed in these microareas to the entire nonattainment area, Clark County has followed an acceptable procedure for demonstrating attainment.

b. Control Measures Relied on for Attainment

For demonstrating attainment of the annual and 24-hour PM–10 standards, the Clark County Plan relies on reductions in directly-emitted PM–10 from the following measures: Section 90 controls for disturbed vacant land, section 92 controls for unpaved parking lots,[46] section 94 (including Handbook) controls for construction sites, section 91 and government agency SIP commitment controls for unpaved roads, and section 93 and government agency SIP commitment controls for unpaved road shoulders (within the paved road dust category).

For the 24-hour attainment demonstration, Clark County models controlled valley-wide future concentrations for the years 2001 and 2006 as well as controlled 2006 concentrations at each of the five microscale sites. We have evaluated the emissions reductions credited to each measure in the attainment demonstrations to ensure they are reasonable. Three factors considered include:

1. Emissions reductions from controls applied (*e.g.* percent reduction achieved through paving or chemical stabilization);

2. Rule penetration (*i.e.* percentage of sources within the total source category that the rule or measure will impact); and

3. Rule effectiveness (*i.e.* the expected rate of compliance with a rule or measure).

We find that the emission reduction estimates for each source category are consistent with available research on the applicable control methods, rule penetration estimates are reasonable based on emissions inventory data, and rule effectiveness estimates are reasonable given the schedule for adoption of measures and other factors. Emissions reductions credited based on these estimates are appropriately applied in the attainment demonstrations. For more information on the quantification of emission reductions, we refer to the TSD associated with this rulemaking.

We are also proposing that the measures relied on for attainment are being expeditiously implemented. Section 90, 91, 92, 93 and 94 requirements all applied well before adoption of the Clark County Plan in June 2001. While Clark County has revised the original SIP commitment deadline for adopting certain revisions to its fugitive dust regulations to March 31, 2003, these revisions provide incremental reductions above an already-adopted baseline that should achieve substantial immediate reductions. Therefore, we believe the extension is reasonable and does not impact our finding that the Plan provides for expeditious implementation of measures. Finally, Clark County's SIP commitment for hiring additional staff to implement and enforce fugitive dust controls was established with an expeditious timeframe for all positions to be filled by the end of 2001. Clark County has not only met, but exceeded this commitment.

6. Other Factors That EPA May Consider

CAA section 188(e) lists five additional factors that we may consider in deciding whether to grant an extension and the length of that extension. These include: (1) The nature and extent of the nonattainment problem; (2) the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and international transport); (3) the population exposed to concentrations in excess of the standard; (4) the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area; and (5) the technological and economic feasibility of various control measures.

In evaluating these factors, we have focused on the nature and extent of the nonattainment area problem, the types of sources contributing to the problem, and the ability of the County to control these sources. Fugitive dust sources dominate the emissions inventory in the Clark County PM–10 nonattainment area. Controls for these sources are well known (paving, wetting surfaces, etc.) and have been adopted; however, the number of sources and nature of sources make education, outreach and enhanced enforcement necessary to assure full compliance with those controls. In addition, costs for paving roads and stabilizing shoulders necessary to

[45] Guideline On Air Quality Models, 2001, sections 7.2.1 and 7.2.2.

[46] Emission reductions for section 92 controls were only specifically calculated for the two microscale areas that included unpaved parking as opposed to a valley-wide basis. These microscale areas play a role in the 24-hour but not annual attainment demonstration. Clark County did not prepare a separate valley-wide inventory for unpaved parking lots apart from the disturbed vacant land inventory. Thus, reductions attributable to the section 92 controls are only implicitly assumed, for purposes of the annual attainment demonstration, within the larger valley-wide emission reductions anticipated from disturbed vacant land.

reduce PM–10 emissions are high and funds are only available over a number of years. These factors generally support a longer time frame for attainment.

7. Conclusion on Extension Request

Based on our review of the Clark County Plan and our proposed determination that it meets the requirements necessary for granting an extension of the attainment date under CAA section 188(e), we are proposing to grant a five-year extension of the attainment date for the 24-hour PM–10 standard in the Clark County PM–10 serious nonattainment area from December 31, 2001 to December 31, 2006.

J. Reasonable Further Progress and Quantitative Milestones

CAA section 172(c)(2) requires nonattainment plans to provide for reasonable further progress (RFP). Section 171(1) of the Act defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D of title I) or may reasonable be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.''

CAA section 189(c) also requires PM–10 plans demonstrating attainment to contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP. These quantitative milestones should consist of elements that allow progress to be quantified or measured. Addendum at 42016.

Clark County identified milestone achievement dates of 2003 and 2006 with respect tp the 24-hour standard. The milestones have been addressed by quantifying emission reductions which result from the implementation of the committed control measures after predicted growth has occurred. Emissions by 2003 are projected to be reduced substantially to 276.48 tons per day, with 77.23 additional tons per day reductions occurring between 2003 and 2006, resulting in 199.25 tons per day. Clark County indicates that total emissions under 210.70 tons per day should result in attainment of the 24-hour standard. RFP Reports are due at the end of 2003 and 2006, which correspond with Clark County's milestone achievement dates.

The milestones for the 24-hour standard are based on reasonable assumptions that are consistent with the implementation schedules for the measures in the plan and with the RFP demonstrations. For these reasons, we propose to find that the Plan meets the quantitative milestone requirement in CAA section 189(c)(1).

K. Contingency Measures

Section 172(c)(9) of the Clean Air Act requires that implementation plans provide for the implementation of specific measures to be undertaken if the area fails to make RFP or attain by its attainment deadline. These contingency measures are to take effect without further action by the State or the Administrator. The Act does not specify how many contingency measures are necessary nor does it specify the level of emission reductions they must produce.

The purpose of contingency measures is to ensure that additional emission reductions beyond those relied on in the attainment and RFP demonstrations are available if there is a failure to make RFP or attain by the applicable attainment date. These additional emission reductions will assure continued progress towards attainment while the SIP is being revised to fully correct the failure. To ensure this continued progress, we recommend that contingency measures provide emission reductions equivalent of one year's average increment of RFP. Addendum at 42016.

The following contingency measures were adopted by Clark County Health District Board of Health Resolution #03–00 on July 27, 2000.

1. Reduce the threshold for site-specific dust mitigation plan requirements for construction activities from ten acres to five acres;

2. Require paving/stabilization of all unpaved roads with ≥ 100 average daily vehicle trips;

3. Provide for at least two additional field enforcement officers above and beyond those staff increases committed to in the State Implementation Plan;

4. Increase minimum penalties for violations of Air Quality Regulations for fugitive dust; and

5. Reduce the size threshold for requiring a dust control monitor (coordinator) at construction sites.

Clark County describes that the entire set of contingency measures will be automatically implemented if Clark County fails to meet the projected 2003 emissions reduction milestone. We note that Clark County has already implemented Contingency Measure 3 for field enforcement officer staff increases above and beyond the staff increases committed to in the Plan. Clark County estimates the emissions reduction benefit from the contingency measures to be 1,373 tons per year in total. This annual reduction exceeds the annual average increment of RFP.

The contingency measures identified in the Plan have been adopted but are not credited in the attainment, RFP or milestone demonstrations for the 24-hour standard and are not necessary to demonstrate expeditious attainment of the standard.

Therefore, we propose to find that the Plan provides for the implementation of contingency measures for the 24-hour standard as required by CAA section 172(c)(9). This proposal is based on our analysis that these contingency measures comply with applicable CAA requirements and EPA policy.

L. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). 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), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: January 9, 2003

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–1145 Filed 1–21–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH118–1b; FRL–7428–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the remaining portions of the Ohio Environmental Protection Agency's (OEPA) regulations for Prevention of Significant Deterioration (PSD) provisions for attainment areas. EPA had previously conditionally approved Ohio's prior SIP submission on October 10, 2001. Today's proposed final approval of changes in the plan correcting minor deficiencies cited in EPA's original conditional approval, is based on Ohio's July 18, 2002, submission of revisions to the Ohio Administrative Code (OAC). In its July 2002 submittal, Ohio also made additional revisions to the OAC that were not addressed in EPA's October 10, 2001 conditional approval.

Recently, EPA announced new regulations regarding changes to the preconstruction permit program under EPA's efforts regarding ''New Source Review Reform.'' Today's approval of Ohio's SIP submission does not address EPA's new rules but is limited to portions of Ohio's preconstruction permit program under the existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any requirements that EPA may promulgate as part of New Source Review Reform.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this action must be received by February 21, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Genevieve Damico at (312) 353–4761 before visiting the Region 5 office.

Written comments should be sent to: Pamela Blakley, Chief, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Permits and Grants Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

I. What action is EPA taking today?

II. Where can I find more information about this proposal and corresponding direct final rule?

I. What Action Is EPA Taking Today?

The EPA is proposing to approve, as a revision to the SIP, the remaining portions of the Ohio Environmental Protection Agency's (OEPA) PSD provisions for attainment areas. EPA had previously conditionally approved Ohio's prior SIP submission on October 10, 2001 (66 FR 51570). Today's proposed final approval of EPA's original conditional approval is based on Ohio's July 18, 2002, submission of the revisions to the OAC. In its July 2002 submittal, Ohio also made additional revisions to OAC 3745–31–01, –02, –03, –05, and –07 that were not addressed in EPA's October 10, 2001 conditional approval.

Recently, EPA announced new regulations regarding changes to the preconstruction permit program under EPA's efforts regarding ''New Source Review Reform''. *See http://www.epa.gov/nsr/.* Today's approval of Ohio's SIP submission does not address EPA's new rules but is limited to portions of Ohio's preconstruction permit program under the existing rules. EPA is taking no position today on whether Ohio will need to make changes to its SIP to meet any requirements that EPA may promulgate as part of New Source Review Reform.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: December 13, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–1236 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0043; FRL–7416–8]

RIN 2060–AH03

National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for primary magnesium refining facilities. The EPA has identified primary magnesium refining facilities as a major source of hazardous air pollutant (HAP) emissions. These proposed standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by facilities in the primary magnesium refining source category include chlorine, hydrochloric acid, dioxin/furan, and trace amounts of several HAP metals. Exposure to these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, reproductive system, and central nervous system. Some of these pollutants are considered to be carcinogens, and all can cause toxic effects in humans following sufficient exposure.

DATES: *Comments.* Submit comments on or before February 21, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by February 3, 2003, a public hearing will be held on February 6, 2003.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, NC, or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Lula Melton, Metals Group, Emission Standards Division (C439–02), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2910, electronic mail address: *melton.lula@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS*	Examples of regulated entities
Primary Magnesium Refining	331419	Primary refiners of nonferrous metals by electrolytic methods.

*North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.9881 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0043. The official public docket is the collection of materials that is available for public viewing in the Primary Magnesium Refining NESHAP Docket at the EPA Docket Center (Air Docket), EPA West, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or review public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statue, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statue. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select ''search'' and then key in Docket ID No. OAR–2002–0043. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2002–0043. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in Wordperfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: Primary Magnesium Refining NESHAP Docket, EPA Docket Center (Air Docket), U.S. EPA West, Mail Code 6102T, Room B108, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0043.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, U.S. EPA West, Mail Code 6102T, Room B108, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. OAR–2002–0043. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document.

By Facsimile. Fax your comments to: (202) 566–1741, Attention Primary Magnesium Refining NESHAP Docket, Docket ID No. OAR–2002–0043.

Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Ms. Lula Melton, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–0043. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Cassie Posey, Metals Group, Emission Standards Division (C439–02), Research Triangle Park, NC 27711, telephone number (919) 541–0069, in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Cassie Posey to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What Is the Source of Authority for Development of NESHAP?
B. What Criteria Are Used in the Development Of NESHAP?
C. What Source Category Is Affected by the Proposed Rule?
D. What Are the Health Effects Associated With Emissions From Primary Magnesium Refineries?
II. Summary of the Proposed Rule
A. What Are the Affected Sources and Emission Points?
B. What Are the Compliance Deadlines?
C. What Are the Emission Limitations?
D. What Are the Operation and Maintenance Requirements?
E. What Are the Initial Compliance Requirements?
F. What Are the Continuous Compliance Requirements?
G. What Are the Notification, Recordkeeping, and Reporting Requirements?
III. Rationale for Selecting the Proposed Standards
A. How Did We Select the Affected Source?
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C. How Did We Determine the Bases and Levels of the Proposed Standards?
D. How Did We Select the Initial Compliance Requirements?
E. How Did We Select the Continuous Compliance Requirements?
F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?
IV. Summary of Environmental, Energy, and Economic Impacts
V. Solicitation of Comments and Public Participation
VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Unfunded Mandates Reform Act of 1995
F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP

and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's proposed NESHAP, Primary Magnesium Refining, was listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that emit or have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum level allowed for NESHAP and is defined under section 112 (d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emissions control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (for which we have emissions information) in the category or subcategory or by the best-performing five sources (for which we have or could reasonably obtain emissions information) for categories or subcategories with fewer than 30 sources.

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, nonair quality health and environmental impacts, and energy impacts.

C. What Source Category Is Affected by the Proposed Rule?

Section 112(c) of the CAA requires us to list all categories of major and area sources of HAP for which we will develop national emission standards. We published the initial list of source categories on July 16, 1992 (57 FR 31576). ''Primary Magnesium Refining'' is one of the source categories on the initial list. The listing was based on our determination that primary magnesium refining facilities may reasonably be anticipated to emit a variety of HAP listed in section 112(b) in quantities sufficient to be major sources.

The source category is comprised of one plant, US Magnesium Corporation located in Rowley, Utah. The plant produces magnesium from brine (salt water) taken from the Great Salt Lake. The production process concentrates the magnesium salts in the brine, then processes the brine to remove impurities that would affect metal quality. After the brine solution is converted to a powder mixture of magnesium chloride ($MgCl_2$) and magnesium oxide in the spray dryers, the powder is conveyed to the melt/reactors. The melt/reactors melt the powder mixture and convert the remaining magnesium oxide to magnesium chloride by injecting chlorine into the molten salt. The purified molten salt is then transferred to the electrolytic cells where the molten magnesium chloride salt is separated into magnesium metal and chlorine by electrolysis. The electrolysis process passes a direct electric current through the molten magnesium chloride, causing the dissociation of the salt and results in the generation of chlorine gas and magnesium metal. The magnesium metal is then transferred to the foundry for casting into ingots for sale. The chlorine produced is piped to a chlorine plant where it is liquefied for reuse or sale.

The HAP emitted from the primary magnesium refining process are chlorine, hydrochloric acid, dioxin/furan, and trace amounts of HAP metals. Emission controls include various combinations of wet scrubbers (venturi and packed-bed) for acid gas and particulate matter (PM) control.

Chlorine is emitted from the melting and purification of reactor cell product and is controlled by conversion to hydrochloric acid in the chlorine reduction burner and subsequent absorption of the hydrochloric acid in venturi and packed-bed scrubber. Using these control technologies, upwards of 99.9 percent control of chlorine is achieved. The electrowinning of the melted magnesium chloride to magnesium metal produces as a by-product chlorine gas which is recovered at the chlorine plant. When the chlorine plant is inoperable, the chlorine produced at the electrolytic cells is routed to a series of packed-bed scrubbers which use ferrous chloride as the adsorbing medium.

Hydrochloric acid is emitted from the spray drying and storage of magnesium chloride powder and the melting and purification of reactor cell product prior to the electrowinning process. Hydrochloric acid emissions are controlled by venturi and packed-bed scrubbers.

Dioxin/furan are generated in the melt reactor and are subject to incidental control by the chlorine reduction burner and wet scrubbers used to control chlorine, hydrochloric acid (HCl), and PM.

D. What Are the Health Effects Associated With Emissions From Primary Magnesium Refiners?

Acute (short-term) exposure to high levels of chlorine in humans can result in chest pain, vomiting, toxic pneumonitis, and pulmonary edema. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs. Chronic long-term exposure to chlorine gas in workers has resulted in respiratory effects including eye and throat irritation and airflow obstruction. Animal studies have reported decreased body weight gain, eye and nose irritation, non-neoplastic nasal lesions, and respiratory epithelial hyperplasia from chronic inhalation exposure to chlorine. No information is available on the carcinogenic effects of chlorine in humans from inhalation exposure. We have not classified chlorine for potential carcinogenicity.

Hydrochloric acid is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of hydrochloric acid to humans. In rats exposed to hydrochloric acid by inhalation, altered estrus cycles have been reported in females and increased fetal mortality and decreased fetal weight have been reported in offspring. We have not classified hydrochloric acid for carcinogenicity.

There are a variety of metal HAP contained in the PM emitted from the primary magnesium refining process. The principal HAP metals emitted include trace quantities of phosphorous and manganese. Health effects in humans have been associated with both deficiencies and excess intakes of manganese. Chronic exposure to low levels of manganese in the diet is considered to be nutritionally essential in humans, with a recommended daily allowance of 2 to 5 milligrams per day. Chronic exposure to high levels of manganese by inhalation in humans

results primarily in central nervous system effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a mask-like face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. We have classified manganese in Group D, not classifiable as to carcinogenicity in humans.

Organic HAP such as chlorinated dibenzodioxins and furans (CDD/F) have been detected in the melt/reactor exhaust. One CDD/F compound, 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD), commonly called dioxin) is listed singly as a HAP. Other CDD/F compounds, many of which cause adverse health effects in the same way as dioxin, are HAP under the definition of polycyclic organic matter. Exposure to CDD/F mixtures causes chloracne, a severe acne-like condition and has been shown to be extremely toxic in animal studies. Dioxin is known to be a developmental toxicant in animals causing skeletal deformities, kidney defects, and weakened immune responses in the offspring of animals exposed during pregnancy. Human studies have shown an association between dioxin and soft-tissue sarcomas, lymphomas, and stomach carcinomas. We have classified dioxin as a probable human carcinogen (Group B2).

In addition to HAP, the proposed rule would also reduce particulate matter emissions which are controlled under national ambient air quality standards. Brief exposure to particulate matter has caused aggravation of existing respiratory and cardiovascular disease and increased risk of premature death.

We recognize that the degree of adverse effects to health experienced by exposed individuals can range from mild to severe. The extent and degree to which the health effects may be experienced depends on:

- Pollutant-specific characteristics (*e.g.*, toxicity, half-life in the environment, bioaccumulation, and persistence);
- The ambient concentrations observed in the area (*e.g.*, as influenced by emission rates, meteorological conditions, and terrain);
- The frequency and duration of exposures; and
- Characteristics of exposed individuals (*e.g.*, genetics, age, preexisting health conditions, and lifestyle), which vary significantly with the population.

II. Summary of Proposed Rule

A. What Are the Affected Sources and Emission Points?

The affected source is each new or existing primary magnesium refinery. A new affected source is one constructed or reconstructed after January 22, 2003. An existing affected source is one constructed or reconstructed on or before January 22, 2003. The proposed rule covers emissions from spray dryers, the melt reactor system, the launder off gas system, and magnesium chloride storage bins.

B. What Are the Compliance Deadlines?

The owner or operator of an existing affected source would have to comply by [DATE 12 MONTHS AFTER THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. New or reconstructed sources that startup on or before [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] must comply by [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**]. New or reconstructed sources that startup after [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] must comply upon initial startup.

C. What Are the Emission Limitations?

The proposed rule includes mass rate emission limits in pounds per hour (lbs/hr) for chlorine, hydrochloric acid, PM, and PM_{10}. The emission limits are shown in Table 1 of this preamble.

TABLE 1.—PROPOSED MASS RATE EMISSION LIMITS

Emission point	Chlorine (lbs/hr)	HCL (lbs/hr)	PM (lbs/hr)	PM–10 (lbs/hr)
Spray Dryers	.....	200	100	.....
Magnesium Chloride Storage Bins	.....	47.5	.....	2.7
Melt/Reactor System	100	7.2	.....	13.1
Launder Off-Gas System	26.0	46.0	37.5	.....

The proposed rule also includes emission limits for dioxin/furan expressed in nanograms of toxicity equivalents per dry standard cubic meter (ng TEQ/dscm) corrected to 7 percent oxygen. Dioxins/furans include a group of 17 chemicals or congeners that share certain similar chemical structures and biological characteristics. The 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin congener is the most well studied and the most toxic of these compounds. Scientists believe that dioxins cause effects in similar ways. Because of this and because exposure is typically to variable mixtures of dioxin-like compounds, we use toxicity equivalency factors (TEF) that compare the potential toxicity of each of the individual dioxin-like compounds to the relative toxicity of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin. With such factors, the toxicity for a mixture can be expressed in terms of its Toxicity Equivalents (TEQ), which is the amount of TCDD it would take to equal the combined toxic effect of all the dioxin-like compounds found in the mixture. To calculate the TEQ, the concentration of each dioxin-like compound is multiplied by its respective TEF.

D. What Are the Operation and Maintenance Requirements?

All plants subject to the proposed rule would be required to prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in § 63.6(e) of the NESHAP General Provisions. All plants must establish and meet operating limits for pressure drop and scrubber water flow rate. A written operation and maintenance plan is also required for control devices subject to an operating limit. The plan must describe procedures for monthly inspections and preventative maintenance requirements for control devices.

E. What Are the Initial Compliance Requirements?

The proposed rule requires a performance test for each control device

to demonstrate initial compliance with the applicable emission limits of chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan. The EPA Method 26 or 26A in 40 CFR part 60, appendix A is the reference method for chlorine and hydrochloric acid. The reference method for PM is EPA Method 5 or 5D in 40 CFR part 60, appendix A. The reference method for PM_{10} is EPA Method 201 in 40 CFR part 60, appendix A. The EPA Method 23 of 40 CFR part 60, appendix A is the reference method for dioxin/furan. The proposed rule would also require owners/operators to establish operating limits for scrubber pressure drop and scrubber water flow rate concurrent with the performance of the initial compliance tests.

F. What Are the Continuous Compliance Requirements?

The proposed rule would require primary magnesium refineries to conduct performance tests at least twice during each title V operating permit term (at midterm and renewal) to demonstrate continuous compliance with the emission limits. Plants would also be required to monitor operating parameters for control devices subject to operating limits and carry out the procedures in their operation and maintenance plan.

For wet scrubbers, plants would be required to use continuous parameter monitoring systems (CPMS) to measure and record the hourly average pressure drop and scrubber water flow rate. To demonstrate continuous compliance, plants would keep records documenting conformance with the monitoring requirements and the installation, operation, and maintenance requirements for CPMS.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

We selected the proposed notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are required by EPA to know what facilities are subject to the standards, if a facility has complied with the proposed rule requirements, and when certain events such as performance tests and performance evaluations are scheduled. Semiannual compliance reports containing information on any deviation from the proposed rule requirements are also required. These reports would include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information would be required. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is needed to determine if changes need to be made to the plan. Records would be required of information needed to document compliance with the rule requirements. These notifications, reports, and records are the minimum needed to ensure initial and continuous compliance.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Affected Source?

Affected source means the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a CAA section 112(c) source category or subcategory for which a CAA section 112(d) standard or other relevant standard is established pursuant to CAA section 112. The affected source may be the same collection of equipment and processes as the source category or it may be a subset of the source category. For each rule, we decide which individual pieces of equipment and processes warrant separate standards in the context of the CAA section 112 requirements and the industry operating practices.

We considered three different approaches for designating the affected source: the entire primary magnesium refinery, groups of emission points, and individual emission points. In selecting the affected sources for the proposed rule, we identified the HAP-emitting operations, the HAP emitted, and the quantity of HAP emissions from the individual or groups of emission points. We concluded that designating the entire primary magnesium refinery as the affected source is the most appropriate approach. This conclusion is consistent with the requirements for defining affected source provided in § 63.2 of the General Provisions. The major emission points include each spray dryer, magnesium chloride storage bin, melt/reactor, and launder off-gas system. Therefore, the proposed rule includes requirements for the control of emissions from each spray dryer, magnesium chloride storage bin, melt/reactor, and launder off-gas system.

B. How Did We Select the Pollutants?

The proposed standards would establish emission limits for chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan. Particulate matter was selected as a surrogate for HAP metal emissions which account for less than one-tenth of one percent of total PM emissions. The principal HAP metals emitted include trace quantities of phosphorous, manganese, and chromium, with lesser quantities of arsenic, antimony, and mercury. With the exception of elemental mercury, metal HAP emissions, when released, are a constituent of total PM. As a result, control technologies applied for PM control will coincidentally achieve comparable levels of control of these pollutants. Standards requiring good control of PM emissions will also achieve good control of metal HAP emissions. Establishing separate standards for these individual HAP would result in no additional reductions beyond that achieved using PM as a surrogate pollutant.

Given that the US Magnesium refinery generates about three pounds of chlorine to each pound of magnesium produced, chlorine and hydrochloric acid are by far the most significant HAP pollutants potentially emitted from primary magnesium refining. As such, both chlorine and hydrochloric acid were selected for the proposed rule.

Lastly, the proposed rule would establish a separate emission limit for dioxin/furan discharged from the melt/reactor stack because of the high toxicity associated with very low exposures to these compounds and their persistence and bioaccumulative effects in the environment.

C. How Did We Determine the Bases and Levels of the Proposed Standards?

Since there is only one primary magnesium refinery in the source category, the MACT floor for both existing and new sources is established by the performance of each emissions control system operating at that source. We do not anticipate the construction of any new sources in this source category. The State of Utah, Department of Environmental Quality (UDEQ) issued a title V operating permit dated October 11, 2001 for US Magnesium Corporation. The permit contains emission limitations for chlorine, hydrochloric acid, PM, and PM_{10} established by the UDEQ. The permit does not contain limits for dioxin/furan.

We conducted our own independent assessment of the emissions test data and concluded that the emission limitations established in the source's title V operating permit are appropriate and achievable. Although the limited test results indicate the permit limits are achievable, the data also show that the

plant is not significantly overachieving the limits. Therefore, we believe that the permit limits reasonably approximate actual emissions and performance and present an accurate picture of the level of control achieved by the best performing source.

An underlying presumption when setting MACT standards is that all emission limitations must be complied with at all times. Consequently, when establishing MACT floors and ultimately a MACT standard, we must consider the long-term variability in performance expected to occur under reasonable worst-case conditions. We must assure that an ensuing standard reflects the level of emission control determined to be MACT. We must also assure that the standard is achievable under normal and recurring worst-case circumstances.

As part of our development of the proposed MACT standard, we assessed the viability of requiring additional or different control equipment to obtain beyond-the-floor emissions reductions. Each control system on the four emission points (*i.e.,* spray dryer stack, magnesium chloride storage bin stack, melt/reactor system stack, and launder off-gas system stack) was evaluated to see if it was the best control equipment to achieve the maximum amount of reduction of chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan. For all four emission points, US Magnesium uses wet scrubbers (packed-bed and venturi scrubbers) to achieve the emission limits. We concluded that wet scrubbing systems are the most appropriate and practical control systems for chlorine, hydrochloric acid, PM, PM_{10}, and dioxin/furan and that there is no other control equipment or methods of control that would be more effective for reducing their emissions taking into consideration cost and feasibility. Therefore, we determined that the emission limitations at the MACT floors also represent MACT.

We also propose that the source prepare and operate according to a fugitive dust emission control plan that describes in detail the measures that will be put in place to control fugitive dust emissions from all unpaved roads and other unpaved operational areas. The existing fugitive dust emission control plan that has been approved as part of the source's title V permit would be acceptable.

Spray Dryers

There are three spray dryers in the source category. The exhaust gas from each is controlled by two venturi scrubbers followed by a packed-bed scrubber. All three dryers are subject to Utah's PM emission limit of 100 lbs/hr. Each test was conducted according to EPA Method 5, and, as far as we know, under normal and representative operating conditions.

We have seven PM emission tests for the three dryers. Dryers 01 and 03 were tested in May 1997; dryers 01 and 02 were tested in December 1997; and all three dryers were tested in June 2002. The May 1997 test includes seven runs, and the other two tests include three runs each. The test results of all seven tests range from 25 to 53 lbs/hr. The average and median values are 37 lbs/hr and 36 lbs/hr, respectively.

We evaluated the existing State PM emission limit as an option for establishing the MACT floor. The test results recorded range from about one-fourth to one-half of the standard and average a little more than one-third of the standard. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 100 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. We have, therefore, determined the MACT floor for spray dryers to be the level of control indicated by the existing State limit of 100 lbs/hr of PM.

All three dryers are subject to Utah's hydrochloric acid emission limit of 200 lbs/hr. We have seven hydrochloric acid emission tests conducted according to EPA Method 26A for the three dryers. Dryers 01 and 03 were tested in May 1997; dryers 01 and 02 were tested in December 1997; and all three dryers were tested in June 2002. The May 1997 test included seven runs, and the other two tests included three runs each. Again, as far as we can determine, each test was performed under normal and representative conditions. The test results of all seven tests range from 51 to 82 lbs/hr and average 68 lbs/hr. The median value is also 68 lbs/hr.

We evaluated the existing State hydrochloric acid emission limit as an option for establishing the MACT floor. The test results recorded range from about one-fourth to almost one-half of the standard and average about one-third of the standard. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 200 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. We have, therefore, determined the MACT floor for spray dryers to be the level of control indicated by the existing State limit of 200 lbs/hr of hydrochloric acid.

We next examined possibilities for beyond-the-floor options. We concluded that the current multi-stage wet scrubbing system is the best available control technology for the removal of hydrochloric acid and particulate matter contained in the spray dryer discharge. Therefore, we have selected the mass rate emission limits established in the source's title V operating permit as MACT for both new and existing spray dryers.

Magnesium Chloride Storage Bins

Magnesium chloride powder from the spray dryers is pneumatically conveyed to storage bins. The exhaust air from the conveyor contains particle matter and low levels of hydrochloric acid. The exhaust gases are directed to vertical packed-bed scrubbers where hydrochloric acid and particulate matter are removed.

The source's title V operating permit limits hydrochloric acid to 47.5 lbs/hr and PM_{10} to 2.7 lbs/hr. Packed bed scrubbers are used to achieve these emission limits. We do not have any emissions test data for this emission point. As such, we decided to adopt the source's title V operating permit limits for PM_{10} and hydrochloric acid. Emissions testing was recently conducted on the magnesium chloride storage bins, and we expect test results within a few weeks of publishing the proposed rule. This data will be added to the public docket as soon as we receive it, and we will consider the data and public comments prior to publication of the final rule.

We evaluated this wet scrubbing system for any potential beyond-the-floor control technology and concluded that the packed-bed scrubber system is the best available control technology for the removal of hydrochloric acid and particulate matter. Thus, we adopted the emission limits established in the source's title V operating permit as MACT.

Melt/Reactor

The melt/reactor system melts and chlorinates dehydrated brine powder to produce high purity molten magnesium chloride feed for electrolysis. The melt/reactor off-gases are cooled in a quench tower and then enter a venturi scrubber where PM is removed. The off-gases are then directed to the chlorine reduction burner where they are combined with tail gases from the chlorine plant and burned with natural gas to form hydrochloric acid.

The gases exit the chlorine reduction burner and enter a scrubber train where hydrochloric acid is recovered. The train consists of three packed bed

scrubbers in series followed by a venturi scrubber.

We have two PM_{10} emission tests for the melt/reactor which were conducted in May 1995 and May 2000. Both tests were conducted in accordance with EPA Method 201, and as far as we can determine, each test was performed under normal and representative operating conditions. The test results range from 2.1 to 5.7 lbs/hr and average 3.9 lbs/hr.

We evaluated the existing State limit as an option for establishing the MACT floor. The test results average about one-third of the standard. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 13.1 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. We have, therefore, determined the MACT floor for the melt/reactor to be the level of control indicated by the existing State limit of 13.1 lbs/hr of PM_{10}.

We have two hydrochloric acid emission tests for the melt/reactor. The tests were conducted in May 1995 and May 2000 in accordance with Method 26A. We believe that each test was performed under normal and representative operating conditions. The May 1995 test results average 3.2 lbs/hr, and the May 2000 test results average 2.8 lbs/hr. We evaluated the existing State limit as an option for establishing the MACT floor. A comparison of the State limit of 7.2 lbs/hr to the actual hydrochloric acid emissions data indicates that the State limit is a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Consequently, we determined the MACT floor for the melt/reactor to be the level of control indicated by the existing State limit of 7.2 lbs/hr of hydrochloric acid.

We have two chlorine emission tests for the melt/reactor. The test were conducted in May 1995 and May 2000 in accordance with EPA Method 26. The May 1995 test results average 21 lbs/hr, and the May 2000 test results average 50 lbs/hr. Again, we believe that each test was performed under normal and representative operating conditions. We evaluated the existing State limit as an option for establishing the MACT floor. A comparison of the State limit of 100 lbs/hr to the actual chlorine emissions data indicates that the State limit is a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Therefore, we determined the MACT floor for the melt/reactor to be the level of control indicated by the existing State limit of 100 lbs/hr of chlorine.

We have source test data on dioxin/furan emissions from the melt/reactor stack which indicates total dioxin/furan emissions on the order of 80 grams per year (g/year) and emissions expressed in terms of TEQ of less than 3 g/year. The current title V operating permit includes no limitations on the emissions of dioxin/furan or any surrogate pollutant.

As previously stated, emission controls applied to the melt/reactor discharge include three packed bed scrubbers in series followed by a venturi scrubber for the control of hydrochloric acid and PM. Although not installed specifically for dioxin/furan control, we believe that some incidental control of dioxin/furan is in fact achieved by these scrubbers and that the floor level of control is represented by the available information on actual emissions. Specifically, we have data on two tests conducted in March of 1998 and May of 2000. Each test is comprised of three test runs conducted in accordance with EPA Method 23.[1] The 1998 TEQ test results range from 12.0 to 25.2 ng/dscm corrected to 7 percent oxygen and average 19 ng/dscm corrected to 7 percent oxygen. The 2000 TEQ results range from 10.4 to 35.9 ng/dscm corrected to 7 percent oxygen and average 24 ng/dscm corrected to 7 percent oxygen. The precision evidenced in the two tests, suggests that the variability due to process variations and control device performance is narrow, with the average results of both tests within ±20 percent. We chose the highest of the individual runs, *i.e.*, 36 ng TEQ/dscm corrected to 7 percent oxygen as a representative value of the performance level that can be achieved. Thus, we have chosen 36 ng TEQ/dscm as the MACT floor. The source plans to conduct additional emissions testing in the near-term. We expect the testing to occur between proposal and promulgation. In determining the final standard for dioxin/furan, we will consider the results of the new test in addition to public comments that we receive.

We evaluated this multi-stage scrubbing system for any potential improvement to go beyond-the-floor. We concluded that the current scrubbing system is the best control option for removal of chlorine, hydrochloric acid, and PM_{10}. For dioxin/furan, we examined a beyond-the-floor alternative, and determined that the next increment of control beyond-the-floor is the installation of a baghouse equipped with a catalytic filter that destroys gaseous dioxins and furans. We estimate the additional capital cost of adding baghouses to be $650,000 and the total annualized cost to be $390,000 per year. We estimate the emissions reductions to be 2.4 grams per year resulting in a cost per gram of total dioxin/furan reduction of $163,865. We believe that the high cost, coupled with the small reduction in dioxin/furan emissions, does not justify the beyond-the-floor alternative at this time. Consequently, we chose the floor level of control of 36 ng TEQ/dscm as MACT.

Launder Off-Gas System

The launder off-gas system (LOG) collects fugitive emissions from the melt reactor area (*i.e.* hoods and launders). The collected fugitive gases enter a horizontally aligned packed scrubber where chlorine, hydrochloric acid, and particulate matter are removed by scrubbing with water. The LOG scrubbed gases are exhausted to the atmosphere, and the scrubber water is returned to the waste water collection system.

We have three PM emission tests for the launder off-gas system. The launder off-gas system was tested in August 1993, July 1998, and January 1999 using EPA Method 5, and as far as we know, under normal and representative operating conditions. The test results of the three tests range from 2.6 to 19.1 lbs/hr and average 7.0 lbs/hr.

We evaluated the existing State PM emission limit as an option for establishing the MACT floor. We compared the State limit of 37.5 lbs/hr to the actual PM emissions data. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 37.5 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Therefore, we determined the MACT floor for the launder off-gas system to be the level of control indicated by the existing State limit of 37.5 lbs/hr of PM.

We have three hydrochloric acid emission tests for the launder off-gas system. The launder off-gas system was tested in August 1993, July 1998, and January 1999 using EPA Method 26A. We believe that the tests were performed under normal and representative operating conditions. The test results of the three tests range from 6.84 to 32.6 lbs/hr and average 15.6 lbs/hr.

We evaluated the existing State hydrochloric acid emission limit as an option for establishing the MACT floor.

[1] Method 23—Determination of Polychlorinated Dibenzo-P-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources.

Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 46.0 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor.

Consequently, we determined the MACT floor for the launder off-gas system to be the level of control indicated by the existing State limit of 46.0 lbs/hr of hydrochloric acid.

We have three chlorine emission tests for the launder off-gas system. The launder off-gas system was tested in August 1993 and January 1999 using EPA Method 26. We believe the tests were performed under normal and representative operating conditions. The test results of the three tests range from 16.6 to 25.9 lbs/hr and average 19.9 lbs/hr.

We evaluated the existing State chlorine emission limit as an option for establishing the MACT floor. Considering that a reasonable margin of safety is necessary to assure continuous compliance, the existing State limit of 26.0 lbs/hr appears to be a reasonable proxy of actual performance, and as such, is appropriate for establishing the MACT floor. Consequently, we determined the MACT floor for the launder off-gas system to be the level of control indicated by the existing State limit of 26.0 lbs/hr of chlorine.

We evaluated potential beyond-the-floor options and concluded that the existing scrubber is the best available control technology for the removal of chlorine, hydrochloric acid, and PM contained in the launder off-gas system discharge. Therefore, we selected the emission limits established in the source's title V operating permit as MACT.

D. How Did We Select the Initial Compliance Requirements?

The proposed rule requires a performance test for each control device to demonstrate initial compliance with the applicable PM, PM_{10}, chlorine and hydrochloric acid limits using the specified testing methods in 40 CFR part 60, appendix A. We have also specified procedures to ensure that control equipment is operating properly for initial compliance. Venturi scrubbers and packed-bed scrubbers must be monitored for scrubber water flow rate and pressure drop. If a facility uses controls other than wet scrubbers or packed-bed scrubbers to control emissions from an affected source, the owner or operator would be required to send us a monitoring plan containing information on the type of device, performance test results, appropriate operating parameters to be monitored, operating limits, and operation and maintenance.

E. How Did We Select the Continuous Compliance Requirements?

For continuous compliance, we chose periodic performance testing for PM, PM_{10}, chlorine, hydrochloric acid, and dioxin/furan which is consistent with current permit requirements. In general, performance tests are repeated every 2.5 to 5 years, depending on the magnitude of the source. Consequently, we decided that performance tests should be repeated no less frequently than twice per permit term of a source's title V operating permit (at mid-term and renewal).

We also specified procedures to ensure that control equipment is operated properly on a continuous basis. Venturi scrubbers and packed-bed scrubbers must be monitored for pressure drop and scrubber water flow rate. If a facility uses controls other than wet scrubbers to control emissions from an affected source, the owner or operator would be required to send us a monitoring plan containing information on the type of device, performance test results, appropriate operating parameters to be monitored, operating limits, and operation and maintenance.

F. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

We selected the notification, recordkeeping, and reporting requirements to be consistent with the NESHAP General Provisions (40 CFR part 63, subpart A). One-time notifications are required by EPA to know what facilities are subject to the standard, if a facility has complied with the rule requirements, and when certain events such as performance tests and performance evaluations are scheduled. Semiannual compliance reports containing information on any deviation from the proposed rule requirements are also required. These reports would include information on any deviation that occurred during the reporting period; if no deviation occurred, only summary information would be required. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), we also require an immediate report of any startup, shutdown, or malfunction where the actions taken in response were not consistent with the startup, shutdown, and malfunction plan. This information is needed to determine if changes to the plan need to be made. Records would be required of information needed to document compliance with the proposed rule requirements. These notifications, reports, and records are the minimum needed to ensure initial and continuous compliance.

IV. Summary of Environmental, Energy and Economic Impacts

Generally, we do not expect the impacts of the proposed rule to be very significant. Currently, the one operating refinery has all of the required air pollution control equipment in place and operating. The only impacts will be the estimated cost of $48,000 for the additional monitoring, recordkeeping and reporting requirements required by the proposed rule.

V. Solicitation of Comments and Public Participation

We seek full public participation in arriving at final decisions and encourage comments on all aspects of the proposed rule from all interested parties. You need to submit full supporting data and detailed analysis with your comments to allow us to make the best use of them. Be sure to direct your comments to the Air and Radiation Docket and Information Center, Docket No. OAR–2002–0043 (*see* **ADDRESSES**).

VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed rule is not a

''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, the proposed rule was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

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

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA met the requirements of Executive Order 13132 in a meaningful and timely manner.

The proposed rule does not have federalism implications. None of the affected facilities are owned or operated by State governments, and the proposed rule would not preempt any State laws that are more stringent. Therefore, 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. In addition, the proposed rule is required by statute and, if implemented, will not impose any substantial direct compliance costs. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

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

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus Executive order 13175 does not apply to the proposed rule.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on the proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is technology based and not based on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Further, the proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory

proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed rule does not contain a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector in any 1 year. The maximum total annual cost of the proposed rule for any year has been estimated to be less than $48,000. Thus, today's proposed rule is not subject to sections 202 and 205 of the UMRA. In addition, the EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards for NAICS code 331419 (*i.e.*, Primary Magnesium Refining) of 1,000 or fewer 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 which is independently owned and operated and is not dominant in its field.

Based on the above definition of small entities, the Agency has determined that there are no small businesses within this source category that would be subject to the proposed rule. Therefore, because the proposed rule will not impose any requirements on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

The information collection requirements in the proposed rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2098.01), and a copy may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The proposed rule would require applicable one-time notifications required by the NESHAP General Provisions (40 CFR part 63, subpart A) for each affected source. As required by the NESHAP General Provisions (40 CFR part 63, subpart A), all plants would be required to prepare and operate by a startup, shutdown, and malfunction plan. Plants also would be required to prepare an operation and maintenance plan for capture systems and control devices subject to operating limits. Records would be required to demonstrate continuous compliance with the monitoring, operation, and maintenance requirements for capture systems, control devices, and monitoring systems. Semiannual compliance reports also are required. These reports would describe any deviation from the standards, any period a continuous monitoring system was out-of-control, or any startup, shutdown, or malfunction event where actions taken to respond were inconsistent with startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report would be required. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), if actions taken in response to a startup, shutdown, or malfunction event are not consistent with the plan, an immediate report must be submitted within 2 days of the event with a letter report 7 days later.

The annual public reporting and recordkeeping burden for this collection of information averaged over the first 3 years after [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**] is estimated to total 731 labor hours per year at a total annual cost of $43,289, including labor, capital, and operation and maintenance.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing 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 EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division (2822), U.S. Environmental Protection Agency (2136), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after January 22, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 21, 2003. The final rule will respond to any OMB or public comments on the information

collection requirements contained in this proposal.

H. 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 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed rule involves technical standards. The EPA proposes to use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, 26, 26A, and 210 in 40 CFR part 60, appendix A. We conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 2F, 2G, 5D, 26, 26A and 201. The search and review results have been documented and placed in Docket OAR–2002–0043.

The EPA invites comment on the compliance demonstration requirements in the proposed rule and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why the proposed rule should adopt these voluntary consensus standards in lieu of or in addition to EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data.

I. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 26, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart TTTTT to read as follows:

Subpart TTTTT—National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining

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Subpart TTTTT—National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining

What This Subpart Covers

§ 63.9880 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) emitted from primary magnesium refineries. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and operation and maintenance requirements.

§ 63.9881 Am I subject to this subpart?

You are subject to this subpart if you own or operate a primary magnesium refinery that is (or is part of) a major

source of hazardous air pollutant (HAP) emissions on the first compliance date that applies to you. Your primary magnesium refinery is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.9882 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your primary magnesium refining facility.

(b) The affected sources are each new and existing primary magnesium refining facility.

(c) This subpart covers emissions from each spray dryer stack, magnesium chloride storage bins scrubber stack, melt/reactor system stack, and launder off-gas system stack at your primary magnesium refining facility.

(d) Each spray dryer, magnesium chloride storage bins scrubber, launder off-gas system, and melt/reactor system at your primary magnesium refining facility is existing if you commenced construction or reconstruction of the affected source before January 22, 2003.

(e) Each spray dryer, magnesium chloride storage bins scrubber, melt/reactor system, and launder off-gas system at your primary magnesium refining facility is new if you commence construction or reconstruction of the affected source on or after January 22, 2003. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

§ 63.9883 When do I have to comply with this subpart?

(a) If you have an existing source, you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you no later than [DATE 1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) If you have a new affected source and its initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emissions limitation and operation and maintenance requirement in this subpart that applies to you by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If you have a new affected source and its initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your primary magnesium refinery is an area source that becomes a major source of HAP, the following compliance dates apply to you:

(1) Any portion of the existing primary magnesium refinery that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the primary magnesium refinery must be in compliance with this subpart no later than 2 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.9930. Several of these notifications must be submitted before the compliance date for your affected source.

Emission Limitations

§ 63.9890 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) For each wet scrubber applied to meet any particulate matter, particulate matter 10 (PM_{10}), chlorine, hydrochloric acid, or dioxins/furans limit in Table 1 to this subpart, you must maintain the hourly average pressure drop and scrubber liquid flow rate at or above the minimum level established during the initial or subsequent performance test.

§ 63.9891 What work practice standards must I meet for my fugitive dust sources?

(a) You must prepare, and at all times operate according to, a fugitive dust emissions control plan that describes in detail the measures that will be put in place to control fugitive dust emissions from all unpaved roads and other unpaved operational areas.

(b) A copy of your fugitive dust emissions control plan must be submitted for approval to the Administrator or delegated authority on or before the applicable compliance date for the affected sources as specified in § 63.9881. The requirement to operate according to the fugitive dust emissions control plan must be incorporated by reference in the source's operating permit issued by the permitting authority under part 70 or 71 of this chapter.

(c) You can use an existing fugitive dust emissions control plan provided it meets the requirements in paragraphs (c)(1) through (3) of this section.

(1) The plan satisfies the requirements of paragraph (a) of this section.

(2) The plan describes the current measures to control fugitive dust emission sources.

(3) The plan has been approved as part of a State Implementation Plan or title V permit.

(d) You must maintain a current copy of the fugitive dust emissions control plan on-site and available for inspection upon request. You must keep the plan for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

Operation and Maintenance Requirements

§ 63.9900 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each control device subject to an operating limit in § 63.9890(b). Each plan must address preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

General Compliance Requirements

§ 63.9910 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) You must develop and implement a written startup, shutdown and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.9911 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test within 180 calendar days of the compliance date that is specified in § 63.9883 for your affected source to demonstrate initial compliance with each emission limit in Table 1 to this subpart that applies to you.

(b) For each operation and maintenance requirement that applies to you where initial compliance is not

demonstrated using a performance test, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.9883.

(c) If you commenced construction or reconstruction between January 22, 2003 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must demonstrate initial compliance with either the proposed emission limitation or the promulgated emission limitation no later than [DATE 180 CALENDAR DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between January 22, 2003 and [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by [DATE 1 YEAR AND 180 DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.9912 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate continuous compliance with all applicable emission limits in Table 1 to this subpart no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

§ 63.9913 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter and PM_{10}?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the specific conditions in paragraph (b) of this section.

(b) To determine compliance with the applicable emission limits for particulate matter in Table 1 to this subpart, you must follow the test methods and procedures in paragraph (b)(1) and (2) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D, as applicable to determine the concentration of particulate matter.

(vi) Method 201 or 201A, as applicable to determine the concentration of PM_{10}.

(2) Collect a minimum sample volume of 60 dry standard cubic feet of gas during each particulate matter or PM_{10} test run. Three valid test runs are needed to comprise a performance test.

(c) Compute the mass emissions rate for each test run using Equation 1 of this section as follows:

$$E_{lb/hr} = \frac{C_s \times Q_{std} \times 60}{7000} \qquad \text{(Eq. 1)}$$

Where:

$E_{lb/hr}$ = Mass emissions rate of particulate matter or PM_{10} (lb/hr);
C_s = Concentration of particulate matter or PM_{10} in the gas stream (gr/dscf);
Q_{std} = Volumetric flow rate of stack gas(dscfm);
60 = Conversion factor (min/hr); and
7000 = Conversion factor (gr/lb).

§ 63.9914 What test methods and other procedures must I use to demonstrate initial compliance with chlorine and hydrochloric acid emission limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraph (b) of this section.

(b) To determine compliance with the applicable emission limits for chlorine and hydrochloric acid in Table 1 to this subpart, you must follow the test methods and procedures specified in paragraphs (b)(1) and (2)of this section.

(1) Determine the concentration of chlorine and hydrochloric acid according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F or 2G to determine the volumetric flow of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 26 or 26A, as applicable, to determine the concentration of hydrochloric acid and chlorine.

(2) Collect a minimum sample of 60 dry standard cubic feet during each test run for chlorine and hydrochloric acid. Three valid test runs are needed to comprise a performance test.

(c) Compute the mass emissions rate for each test run using Equation 1 of this section.

$$E_{lb/hr} = \frac{C_s \times Q_{std} \times 60}{35.31 \times 454{,}000} \qquad \text{(Eq. 1)}$$

Where:

$E_{lb/hr}$ = Mass emissions rate of chlorine or hydrochloric acid (lb/hr);
C_s = Concentration of chlorine or hydrochloric acid in the gas stream (mg/dscm);
Q_{std} = Volumetric flow rate of stack gas (dscfm);
60 = Conversion factor (min/hr);
35.31 = Conversion factor (dscf/dscm); and
454,000 = Conversion factor (mg/lb).

§ 63.9915 What test methods and other procedures must I use to demonstrate initial compliance with dioxin/furan limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraph (b) of this section.

(b) To determine compliance with the applicable emission limits for dioxins/furans in Table 1 to this subpart, you must follow the test methods and procedures specified in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of dioxin and furan according to the following test methods in appendix A to part 60 of this chapter.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F or 2G to determine the volumetric flow of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 23, as applicable to determine the concentration of dioxins/furans. For each dioxin/furan congener measured in accordance with this paragraph, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 2 to this subpart.

(2) Collect a minimum sample of 100 dry standard cubic feet during each test

run. Three valid test runs are needed to comprise a performance test.

§ 63.9916 What test methods and other procedures must I use to establish and demonstrate initial compliance with the operating limits?

(a) For a wet scrubber subject to operating limits for pressure drop and scrubber water flow rate in § 63.9890(b, you must establish site-specific operating limits according to the procedures in paragraphs (a)(1) and (2) of this section.

(1) Using the continuous parameter monitoring system (CPMS) required in § 63.9920, measure and record the pressure drop and scrubber water flow rate at least every 15 minutes during each run of the particulate matter performance test.

(2) Compute and record the average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average individual pressure drop and scrubber water flow rate values in any of the three runs that meet the applicable emission limit.

(b) [Reserved]

§ 63.9917 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission limit in Table 1 to this subpart, you have demonstrated initial compliance if:

(1) You meet the conditions in Table 3 to this subpart; and

(2) For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.9890(b), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.9915(a).

(b) [Reserved]

§ 63.9918 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

(a) You must demonstrate initial compliance by certifying in your notification of compliance status that you have met the requirements in paragraphs (a)(1) through (3) of this section.

(1) You have prepared the operation and maintenance plan according to the requirements in § 63.9910; and

(2) You will operate each control device according to the procedures in the plan; and

(3) You submit a notification of compliance status according to the requirements in § 63.9930.

(b) [Reserved]

Continuous Compliance Requirements

§ 63.9920 What are my continuous monitoring requirements?

For each wet scrubber subject to the operating limits for pressure drop and scrubber water flow rates in § 63.9890(b), you must at all times monitor the hourly average pressure drop and liquid flow rate using a CPMS according to the requirements in § 63.9921(a).

§ 63.9921 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each wet scrubber subject to the operating limits in § 63.9890(b) for pressure drop and scrubber water flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a)(1) and (2) of this section.

(1) For the pressure drop CPMS, you must:

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure and that minimizes or eliminates pulsating pressure, vibration, and internal and external corrosion.

(ii) Use a gauge with a minimum measurement sensitivity of 0.5 inch of water or a transducer with a minimum measurement sensitivity of 1 percent of the pressure range.

(iii) Check the pressure tap for pluggage daily.

(iv) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(vi) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(2) For the scrubber water flow rate CPMS, you must:

(i) Locate the flow sensor and other necessary equipment in a position that provides a representative flow and that reduces swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(ii) Use a flow sensor with a minimum measurement sensitivity of 2 percent of the flow rate.

(iii) Conduct a flow sensor calibration check at least semiannually according to the manufacturer's instructions.

(iv) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(b) You must install, operate, and maintain each CPMS for a wet scrubber according to the requirements in paragraphs (b)(1) through (3) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 5-minute period.

(2) Each CPMS must have valid data for at least 95 percent of every averaging period.

(3) Each CPMS must determine and record the average of all recorded readings.

§ 63.9922 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.9923 How do I demonstrate continuous compliance with the emission limitations that apply to me?

For each affected source subject to an emission limit in Table 1 to this subpart, you must demonstrate continuous compliance according to the requirements in Table 4 to this subpart.

§ 63.9924 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each emission point subject to an emission limit in Table 1 to this subpart, you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.9900 by performing preventive maintenance for each control device according to § 63.9900(b) and recording all information needed to document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plan required in § 63.9900(b) on site and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.9925 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in § 63.9890 that applies to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet each operation and maintenance requirement required in § 63.9900 that applies to you. These instances are deviations from the emission limitations and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.9931.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9930 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(f)(4), and 63.9(b) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must submit your initial notification no later than [DATE 120 DAYS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) As specified in § 63.9(b)(3), if you start your new affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register,** you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

§ 63.9931 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9883 and ending on June 30 or December 31, whichever date comes after the compliance date that is specified for your source in § 63.9883.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 20 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(iii)(A) or 40 CFR 71.6(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.9923 and 63.9924 that apply to you, a statement that there were no deviations from the emission limitations or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a CPMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in § 63.9890 that occurs at an affected source where you are not using a CPMS to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a CPMS to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the

information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6 (a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of compliance does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

§ 63.9932 What records must I keep?

(a) You must keep the following records:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in §§ 63.9932 and 63.9933 to show continuous compliance with each emission limitation and operating and maintenance requirement that applies to you.

§ 63.9933 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records off site for the remaining 3 years.

Other Requirements and Information

§ 63.9940 What parts of the General Provisions apply to me?

Table 4 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.9941 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA) or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (3) of this section.

(1) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(2) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(3) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9942 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows;

Chlorine plant bypass scrubber means the wet scrubber that captures chlorine gas during a chlorine plant shut down or failure.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including operating limits) or operation and maintenance requirement;

(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 in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, or operating limit.

Launder off-gas system means a system that collects chlorine and

hydrochloric acid fumes from collection points within the melt/reactor system building. The system then removes particulate matter and hydrochloric acid from the collected gases prior to discharge to the atmosphere.

Magnesium chloride storage bins means vessels that store dried magnesium chloride powder produced from the spray drying operation.

Melt/reactor system means a system that melts and chlorinates dehydrated brine to produce high purity molten magnesium chloride feed for electrolysis.

Primary magnesium refining means the production of magnesium metal and magnesium metal alloys from natural sources of magnesium chloride such as sea water or water from the Great Salt Lake and magnesium bearing ores.

Responsible official means responsible official as defined in § 63.2.

Spray dryer means dryers that evaporate brine to form magnesium powder by contact with high temperature gases exhausted from gas turbines.

Wet scrubber means a device that contacts an exhaust gas with a liquid to remove particulate matter and acid gases from the exhaust. Examples are packed-bed wet scrubbers and venturi scrubbers.

Tables to Subpart TTTTT of Part 63

As required in § 63.9890(a), you must comply with each applicable emission limit in the following table:

TABLE 1 TO SUBPART TTTTT OF PART 63.—EMISSION LIMITATIONS

For . . .	You must comply with each of the following . . .
1. Each spray dryer stack	a. You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 100 lbs/hr; and b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 200 lbs/hr.
2. Each magnesium chloride storage bins scrubber stack.	a. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 47.5 lbs/hr or 0.35 gr/dscf; and b. You must not cause to be discharged to the atmosphere any gases that contain PM_{10} in excess of 2.7 lbs/hr or 0.016 gr/dscf.
3. Each melt/reactor system stack	a. You must not cause to be discharged to the atmosphere any gases that contain PM_{10} in excess of 13.1 lbs/hr; and b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 7.2 lbs/hr; and c. You must not cause to be discharged to the atmosphere any gases that contain chlorine in excess of 100 lbs/hr; and d. You must not cause to be discharged to the atmosphere any gases that contain 36 ng TEQ/dscm to 7% oxygen.
4. Each launder off-gas system stack	a. You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 37.5 lbs/hr; and b. You must not cause to be discharged to the atmosphere any gases that contain hydrochloric acid in excess of 46.0 lbs/hr; and c. You must not cause to be discharged to the atmosphere any gases that contain chlorine in excess of 26.0 lbs/hr.

TABLE 2 TO SUBPART TTTTT OF PART 63.—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	0.5
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.001
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.5
1,2,3,7,8-pentachlorinated dibenzofuran	0.05
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.001

TABLE 3 TO SUBPART TTTTT OF PART 63.—INITIAL COMPLIANCE WITH EMISSIONS LIMITS

As required in 63.9916, you must demonstrate initial compliance with the emission limits according to the following table:

For . . .	You have demonstrated initial compliance if . . .
1. Each spray dryer stack	a. The average mass flow of particulate matter from the control system applied to emissions from each spray dryer, measured according to the performance test procedures in § 63.9913(c), did not exceed 100 lbs/hr; and

TABLE 3 TO SUBPART TTTTT OF PART 63.—INITIAL COMPLIANCE WITH EMISSIONS LIMITS—Continued

As required in 63.9916, you must demonstrate initial compliance with the emission limits according to the following table:

For . . .	You have demonstrated initial compliance if . . .
	b. The average mass flow of hydrochloric acid from the control system applied to emissions from each spray dryer, determined according to the performance test procedures in § 63.9914(c), did not exceed 200 lbs/hr.
2. Each magnesium chloride storage bins scrubber stack.	a. The average mass flow of hydrochloric acid from the control system applied to the magnesium chloride storage bins scrubber exhaust, measured according to the performance test procedure in § 63.9914, did not exceed 47.5 lbs/hr; and b. The average mass flow of PM_{10} from the control system applied to the magnesium chloride storage bins scrubber exhaust, determined according to the performance test procedures in § 63.9913, did not exceed 2.7 lbs/hr.
3. Each melt/reactor system stack	a. The average mass flow of PM_{10} from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9913, did not exceed 13.1 lbs/hr; and b. The average mass flow of hydrochloric acid from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 7.2 lbs/hr; and c. The average mass flow of chlorine from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 100 lbs/hr. d. The average concentration of dioxins/furans from the control system applied to the melt/reactor system exhaust, measured according to the performance test procedures in § 63.9915, did not exceed 36 ng TEQ/dscm to 7% oxygen.
4. Each launder off-gas system stack.	a. The average mass flow of particulate matter from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9913, did not exceed 37.5 lbs/hr; and b. The average mass flow of hydrochloric acid from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 46.0 lbs/hr; and c. The average mass flow of chlorine from the control system applied to the launder off-gas system collection system exhaust, measured according to the performance test procedures in § 63.9914, did not exceed 26.0 lbs/hr.

TABLE 4 TO SUBPART TTTTT OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

As required in § 63.9923, you must demonstrate continuous compliance with the emission limits according to the following table:

For . . .	You must demonstrate continuous compliance by . . .
1. Each spray dryer stack	a. Maintaining emissions of PM_{10} at or below 100 lbs/hr; and b. Maintaining emissions of hydrochloric acid at or below 200 lbs/hr; and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal).
2. Magnesium chloride storage bins scrubber stack.	a. Maintaining emissions of hydrochloric acid at or below 47.5 lbs/hr or 0.35 gr/dscf; and b. Maintaining emissions of PM_{10} at or below 2.7 lbs/hr or 0.016 gr/dscf; and c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal).
3. Each melt/reactor system stack	a. Maintaining emissions of PM_{10} at or below 13.1 lbs/hr; and b. Maintaining emissions of hydrochloric acid at or below 7.2 lbs/hr; and c. Maintaining emissions of chlorine at or below 100 lbs/hr; and d. Maintaining emissions of dioxins/furans at or below 36 ng TEQ/dscm to 7% oxygen. e. Conducting subsequent performance test at least twice during each term of your title V operating permit (at mid-term and renewal).
4. Each launder off-gas system stack.	a. Maintaining emissions of particulate matter at or below 37.5 lbs/hr; and b. Maintaining emissions of hydrochloric acid at or below 46.0 lbs/hr; and c. Maintaining emissions of chlorine at or below 26.0 lbs/hr; and d. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at mid-term and renewal).

TABLE 5 TO SUBPART TTTTT OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTT OF PART 63

As required in § 63.9950, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

Citation	Subject	Applies to Subpart TTTTT	Explanation
63.1	Applicability	Yes.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities	Yes.	

TABLE 5 TO SUBPART TTTTT OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTTT OF PART 63—Continued

As required in § 63.9950, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table:

Citation	Subject	Applies to Subpart TTTTT	Explanation
63.5	Construction and Reconstruction	Yes.	
63.6(a)–(g)	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(h)	Determining Compliance with Opacity and Visible Emission standards.	No.	
63.6(i)–(j)	Extension of Compliance and Presidential Compliance Exemption.	Yes.	
63.7(a)(1)–(2)	Applicability and Performance Test Dates	No	Subpart TTTTT specifies performance test applicability and dates.
63.7(a)(3), (b)–(h)	Performance Testing Requirements	Yes.	
63.8 except for (a)(4),(c)(4), and (f)(6).	Monitoring Requirements	Yes.	
63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart TTTTT does not require flares.
63.8(c)(4)	Continuous Monitoring System Requirements	No	Subpart TTTTT specifies requirements for operation of CMS.
63.8(f)(6)	Relative Accuracy Test Alternative (RATA)	No	Subpart TTTTT does not require continuous emission monitoring systems.
63.9	Notification Requirements	Yes	
63.9(g)(5)	Data Reduction	No	Subpart TTTTT specifies data reduction requirements.
63.10 except for(b)(2)(xiii) and (c)(7)–(8).	Recordkeeping and Reporting Requirements	Yes.	
63.10(b)(2)(xiii)	Continuous Monitoring System (CMS) Records for RATA Alternative.	No	Subpart TTTTT does not require continuous emission monitoring systems.
63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Accedences for CMS.	No	Subpart TTTTT specifies recordkeeping requirements.
63.11	Control Device Requirements	No	Subpart TTTTT does not require flares.
63.12	State Authority and Delegations	Yes.	
63.13–63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

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ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1511 and 1552

[FRL–7441–1]

Acquisition Regulation: Background Checks for Environmental Protection Agency Contractors Performing Services On-Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the EPA Acquisition Regulation (EPAAR) to add a clause requiring contractors (and subcontractors) to perform background checks and make suitability determinations for contractor (and subcontractor) employees performing services on or within Federally-owned or leased space and facilities, commercial space primarily occupied by Federal employees, and Superfund, Oil Pollution Act, and Stafford Act sites. The clause will require contractors (and subcontractors) to perform background checks and make suitability determinations on their employees before the employees can perform on-site contract services for the EPA. Contracting Officers will be allowed to waive the requirements of the clause on a case-by-case basis. The process contemplated by the clause will allow EPA to mitigate any actual or potential threat to the public health, welfare and the environment.

DATES: Comments should be submitted no later than March 24, 2003.

ADDRESSES: Comments may be submitted by mail, electronically, or through hand delivery/courier. For comments submitted by mail, send three copies of your comments to: OEI Docket, Title: Background Checks for EPA Contractors Performing Services On-Site, EPA Docket Center (28221T), 1200 Pennsylvania Ave., NW, Washington DC, 20460, Attention Docket ID No. OARM–2002–0001. For comments submitted electronically or through hand delivery/courier, please follow the detailed instructions as provided in Unit I of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Thomas Valentino, U.S. EPA, Office of Acquisition Management, Mail Code (3802R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4522.

SUPPLEMENTARY INFORMATION: Information on the proposed regulation for background checks for contractors (and subcontractors) performing on-site work is organized as follows:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

EPA has established an official public docket for this action under Docket ID No. OARM–2002–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The official public docket is the collection of materials that is available

for public viewing at the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as Confidential Business Information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments, but may consider them if time permits.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties, or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. OARM–2002–0001. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *oei.docket@epa.gov,* Attention Docket ID No. OARM–2002–0001. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Please avoid the use of special characters and any form of encryption.

2. By Mail. Send three copies of your comments to: OEI Docket, Title: Background Checks for EPA Contractors Performing Services On-Site, EPA Docket Center (28221T), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OARM–2002–0001.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC 20004, Attention Docket ID No. OARM–2002–0001. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays).

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

The events of September 11, 2001, have heightened both Government and private industry awareness relative to protecting facilities and the personnel who work therein. EPA has a large number of contracts that require contractor (and subcontractor) employees to access federally-owned or leased facilities and space, federally-occupied facilities, and Superfund, Oil Pollution Act, and Stafford Act sites. Although such access is often necessary for contract performance, it nevertheless creates significant potential risks for EPA. While background checks provide no guarantee as to a person's loyalty, trustworthiness, or suitability for contract performance, they provide valuable information that may prove useful in determining an individual's suitability to perform on-site services for the EPA.

III. Proposed Rule

This proposed rule would amend the EPAAR to create an EPA contract clause that will require contractors (and subcontractors) to perform background checks and make suitability determinations for contractor (and subcontractor) employees performing services on-site.

IV. Statutory and Executive Order Reviews

Executive Order 12866

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned ICR No. 2102.01.

The EPA uses contractors to perform services on or within federally-owned or leased facilities and space, federally-occupied facilities, and Superfund, Oil Pollution Act, and Stafford Act sites. Information collected by on-site contractors for performing background checks and making suitability determinations is required for all contractor employees before the individual employees can perform on-site contract services for the EPA. The Contractor is also responsible for maintaining records associated with all background checks and suitability determinations.

The annual public reporting and record keeping burden for this collection of information is a total of 7,000.5 hours annually. This figure was determined by multiplying the average number of background checks per annum (4,667) by the estimated time to complete one collection request (1.5 hours per response).

The total annual costs are estimated at $590,002.14. This figure was determined by multiplying the cost associated with one collection request ($126.42) by the average number of collections per annum (4,667). This figure does not include any capital or start-up costs because it will not be necessary for respondents to acquire any capital goods to provide the requested information.

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

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

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No.OARM–2002–0001, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1745 and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Please include the EPA Docket ID No. OARM–2002–0001 in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 22, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by February 21, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, ''small entity'' is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the

impact of concern is any significant *adverse* economic impact on small entities, because the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule will not have a significant economic impact on small entities because the contractor will be able to include any costs incurred in complying with clause requirements as part of the costs incurred under the contract, either directly or indirectly (depending on the contract type, and the contractor's treatment of costs). In addition, the types of background search services to be undertaken pursuant to the proposed clause are commercially available to all businesses.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13045

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

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

Executive Order 13132

Executive Order 13132, entitled, ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This 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 proposed rule would amend the EPAAR to create an EPA contract clause that will require contractors to perform background checks for employees performing services on-site. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

Executive Order 13175

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'' are 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. Thus, Executive Order 13175 does not apply to this proposed rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communication between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

National Technology Transfer and Advancement Act of 1995

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

This proposed rule does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards.

Executive Order 13211 (Energy Effects)

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28335 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

List of Subjects in 48 CFR Parts 1511 and 1552

Environmental protection, Government procurement.

Dated: January 15, 2003.

John C. Gherardini, III,

Acting Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is proposed to be amended as set forth below:

PART 1511—[AMENDED]

1. The authority citations for Part 1511 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1511.011–81 is added to read as follows:

1511.011–81 Background Checks for EPA Contractors Performing Services On-Site.

(a) Contracting Officers shall insert the clause at 1552.211–81 in all solicitations and contracts, except for commercial item acquisitions, where it is expected that the contractor will be required to perform services on or within Federally-owned or leased space and facilities, commercial space primarily occupied by federal employees, or Superfund, Oil Pollution Act, or Stafford Act sites. The successful awardee must complete the background checks and suitability determinations for individuals before they may begin on-site performance under the contract. This clause is also required, when applicable, for work to be performed on-site that is ordered under non-EPA contracts.

(b) Contracting Officers may include the clause described in paragraph (a) of this clause in solicitations and contracts other than those identified in paragraph (a) of this clause, including commercial item acquisitions if deemed appropriate, if determined necessary in order to protect the Government's interests and national security.

(c) Contracting Officers, on a case-by-case basis, may, either temporarily or permanently, waive the requirement for background checks and suitability determinations if they determine, in writing, that they are not necessary at a specific location, or for a specific individual, in order to protect the Government's interest and national security.

(d) As used in the solicitation and contract clause, Superfund or CERCLA refers to the ''Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, as amended by SARA in 1986), 42 U.S.C. 9601; the Oil Pollution Act refers to the Clean Water Act as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701; and the Stafford Act is the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121.

PART 1552—[AMENDED]

3. The authority citation for Part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418(b).

4. Section 1552.211–81 is added to read as follows:

1552.211–81 Background Checks for EPA Contractors Performing Services On-Site.

As prescribed in 1511.011–81, insert the following clause:

BACKGROUND CHECKS FOR EPA CONTRACTORS PERFORMING SERVICES ON-SITE (XXX 2003)

(a) The requirements of this clause apply to the successful awardee(s) of the contract who will be performing on-site work for EPA under the contract.

(b) *Definitions.*

For purposes of this clause, the following definitions apply:

(1) *On-Site:* ''On-site'' refers to any federally-owned or leased space and facilities and any commercial space primarily occupied by federal workers. It also includes sites where the Environmental Protection Agency (EPA) is working under the authority of CERCLA, the Oil Pollution Act, or the Stafford Act.

(2) *Suitability:* ''Suitability'' refers to identifiable character traits and past conduct which are reasonably sufficient to indicate whether a given individual is likely or not likely to be able to perform the requirements of a contract or subcontract at EPA on-site locations without undue risk to the interests of the Government and the national security.

(3) *Suitability determination:* A ''suitability determination'' is a determination that there are reasonable grounds to believe that an individual will likely be able to perform the contract requirements on-site without undue risk to the interests of the Government and the national security.

(c) *Applicability.*

(1) Contractors shall perform background checks and make suitability determinations on contractor employees before the individual employees can perform on-site contract services for the EPA.

(2) Contracting Officers, on a case-by-case basis, may, either temporarily or permanently, waive the requirements of this clause, if they determine in writing that background checks and suitability determinations are not necessary at a specific location, or for a specific individual, in order to protect the Government's interests and national security.

(d) *Background Check.*

(1) The Contractor is responsible for completing background checks and making suitability determinations on its employees prior to the employee beginning on-site work. Compliance with the requirement for performing a background check and making a suitability determination shall not be construed as providing a contractor employee clearance to have access to classified information or confidential business information. Contractors are required to maintain records of background checks and suitability determinations for four years after they are completed, and to make them available to the Government when requested.

(2) At a minimum, the background check and suitability determination must include an evaluation of:

(i) Law enforcement checks (Federal, State, and Local for the past 5 years);

(ii) Credit report;

(iii) Social Security Number trace;

(iv) Verification of U.S. citizenship or legal resident status;

(v) Employment history (past 5 years);

(vi) Education history (highest degree verified);

(vii) References (3 individuals);

(viii) Residence (past 3 years);

(ix) Military service discharge notice; and

(x) Professional license and certification.

(e) *Background Check Guidelines.*

(1) In making a suitability determination, the contractor shall consider the following factors and evaluate them against the work to be performed, the performance location, and the degree of risk to the Government:

(i) Any loyalty or terrorism issue;

(ii) Patterns of conduct (*e.g.*, alcoholism/drug addiction, financial irresponsibility/major liabilities, dishonesty, unemployability for negligence or misconduct, criminal conduct);

(iii) Dishonorable military discharge;

(iv) Felony and misdemeanor offenses;

(v) Drug manufacturing/trafficking/sale;

(vi) Major honesty issue (*e.g.*, extortion, armed robbery, embezzlement, perjury);

(vii) Criminal sexual misconduct;

(viii) Serious violent behavior (*e.g.*, rape, aggravated assault, arson, child abuse, manslaughter);

(ix) Illegal use of firearms/explosives; and

(x) Employment related misconduct involving dishonesty, criminal or violent behavior.

(2) The contractor shall evaluate any adverse information about an individual by considering the following factors before making a suitability determination:

(i) The nature, extent and seriousness of the conduct;

(ii) The circumstances surrounding the conduct;

(iii) The frequency and recency of the conduct;

(iv) The individual's age and maturity at the time of the conduct;

(v) The presence or absence of rehabilitation and other pertinent behavior changes;

(vi) The potential for pressure, coercion, exploitation, or duress; and

(vii) The likelihood of continuation of the conduct.

(f) *Employee Removal.*

Whenever a contractor becomes aware that any employee working at an on-site location

under an EPA contract becomes an unacceptable risk to the Government, the contractor shall immediately remove that employee from the site, notify the Contracting Officer that such a removal has taken place, and replace them with a qualified substitute. If the approval of the Contracting Officer was initially required for the removed employee, Contracting Officer approval is required for the replacement employee.

(g) *Contracting Officer Notification.*

Prior to commencement of on-site contract performance, the contractor shall notify the Contracting Officer that the background checks and suitability determinations required by this clause have been completed for affected individuals.

(h) *Flowdown Provision.*

The Contractor agrees to insert terms that conform substantially to the language of this clause in all subcontracts under this contract.

(End of clause)

[FR Doc. 03–1361 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 2002–12347; Notice 01]

New Rearview Technology and Federal Motor Vehicle Safety Standard No. 111; Rearview Mirrors

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: The agency has received two petitions asking us to amend the Federal Motor Vehicle Safety Standard for rearview mirrors. AM General Corporation (AM General) petitioned the agency to amend the standard to permit vehicles with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (kg) and with an overall length that is less than 508 centimeters (cm) to have the option of being equipped with a passenger-side convex mirror with an area of at least 323 square centimeters (cm^2). Currently, these vehicles are required to have a flat passenger-side mirror with a reflective area of at least 323 cm^2. The agency granted AM General's petition on May 23, 2001.

In addition, Ms. Barbara Sanford petitioned the agency to amend the rearview mirror standard to require that all commercial trucks traveling on interstate highways have convex mirrors affixed to their front right and left fenders to give drivers of these vehicles a better view of the area around them while making a lane change. The agency granted Ms. Sanford's petition on May 21, 2001.

This document discusses the recommendations submitted by AM General and Ms. Sanford and asks questions that we hope will help us to determine whether they would be beneficial to safety and at what cost. In addition to addressing the aforementioned petitions, the agency also wishes to take this opportunity to examine the rearview mirror standard as a whole to determine whether there are any amendments that can be made to allow consumers to utilize innovations in mirror and other rearview technology that have been developed since the standard was last amended in 1982. It should be pointed out that the changes to the standard that are being explored are to eliminate impediments to new technology. Any amendments would permit, but not require, the use of new technology.

DATES: Comments must be received on or before March 24, 2003.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to: Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, Office of Rulemaking, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Flanigan's telephone number is (202) 366–4918 and his facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION:

Background

Standard No. 111

When standard No. 111 was promulgated in 1967, it applied only to passenger cars. The standard only permitted the use of mirrors of unit magnification (hereafter referred to as flat mirrors) at that time. On August 12, 1975, the agency published a final rule that extended the passenger car requirements to multipurpose passenger vehicles, trucks, and buses with a GVWR 4,536 kg or less (hereafter referred to as light trucks) [40 FR 33825]. The final rule established requirements for light trucks to have either outside flat mirrors that meet passenger car requirements or mirrors with an area of at least 126 cm^2.

The August 12, 1975 notice also established requirements that multipurpose passenger vehicles, trucks, and buses with a GVWR of between 4,536 kg and 11,340 kg have flat outside mirrors with a reflective surface of not less than 323 cm^2. On December 30, 1976, the agency published a final rule that established requirements for multipurpose passenger vehicles, trucks, and buses with a GVWR of 11,340 kg or more. The requirements specified that these vehicles have outside mirrors with a reflective surface of not less than 323 cm^2.

Until 1982, the agency allowed only flat mirrors on vehicles with a GVWR of 4,536 kg or less other than school buses (hereafter referred to as ''light vehicles''). However, on September 2, 1982, the agency published a final rule amending Standard No. 111 to allow constant radius of curvature or spherical convex mirrors (hereafter referred to as ''convex mirrors'') to be used on light vehicles [47 FR 38698]. The surface of this type of mirror is curved to increase the field of view. This action was in response to a May 6, 1976, petition from General Motors Corporation (GM). GM petitioned the agency to amend the standard to allow convex mirrors on the passenger side of light vehicles where the interior mirror did not meet the field of view requirements. GM pointed out in its petition that convex mirrors would provide a wider field of view than the flat mirrors of the same size.

The amendment gave light vehicles that do not meet the field of view requirements for their interior mirror the option of having an outside mirror of unit magnification or a convex mirror installed on the passenger side. The agency, however, was concerned about the greater difficulties in correctly judging distance and speed that occur using convex mirrors as a result of the distortion of the objects being viewed. This concern has to be balanced by the fact that convex mirrors greatly increase the driver's field of view and, therefore, reduce the necessity for head movement to detect other vehicles.

Since convex mirrors have been permitted on the passenger side of light vehicles, many manufacturers have used them. Today, most light vehicles have a convex mirror on the passenger side. However, the agency still receives complaints from consumers about these mirrors. As described below, convex mirrors have characteristics that present problems for a portion of the driving public.

Currently Permitted Mirrors

The main difference between a flat mirror and convex mirror is that the image of an object viewed in a convex

mirror is both distorted and smaller than that of the same object viewed in a flat mirror. Therefore, such an object appears farther away and could be less recognizable when viewed in a convex mirror. Additionally, if the object were approaching or receding, its rate of change in position relative to other vehicles and its speed are more difficult to judge as well. For example, a driver who is not familiar with using a convex mirror on the passenger side may determine that it is safe to change lanes to the right, not realizing that a vehicle to the right rear is too close for the maneuver to be completed safely. This is why convex mirrors have been permitted only in conjunction with flat interior mirrors. The flat interior mirror provides the correct depth and speed perception, whereas the convex mirror achieves greater field of view, but cannot give precise depth and speed perception. Even if the interior mirror does not meet the field of view requirements in the standard, it is still available for speed and distance judgment of vehicles that are detected in the right convex mirror, if they are also visible in the interior mirror.

There have been other problems associated with the use of convex mirrors that include double vision, eyestrain, and nausea. Based on research, the agency determined that these problems could be minimized by placing certain restrictions on the mirror's design and by trading off correct speed and depth perception to achieve a greater field of view. If a vehicle has an interior mirror that does not meet the field of view requirements and the manufacturer opts to use a convex mirror on the passenger side, the convex mirror must meet the following three requirements: (1) When the radius of curvature is measured at ten different positions as specified in the standard, none of the radii of curvature readings may deviate from the average radius of curvature by more than plus or minus 12.5 percent; (2) the mirror must be indelibly marked at the lower edge of the mirror's reflective surface with the words ''Objects In Mirror Are Closer Than They Appear''; and (3) the average radius of curvature cannot be less than 889 millimeters (mm) and not more than 1,651 mm.

The first requirement, that the convex mirror's radius of curvature may not deviate more than plus or minus 12.5 percent from the average radius of curvature, is to ensure that the mirrors have a reasonably constant radius of curvature. This minimizes changes in image distortion across the face of the mirror. This helps reduce many of the reported instances of double vision, nausea, and dizziness.

The second requirement specifies that a visible warning be marked on the mirror's reflective surface. Because the mirrors cause distance and speed distortion, *i.e.*, the objects appear further away in the mirror, the agency felt that a warning should be placed in plain view to the vehicle operator. This is the rationale for the second requirement, that the mirrors be labeled with ''Objects in Mirror Are Closer Than They Appear.'' If the driver is aware of this label, the driver will be aware that this mirror is not a flat mirror, and hopefully not make a mistake in judgment.

The third requirement, which specifies a minimum and maximum radii of curvature of the mirrors, is to ensure that the mirrors on different vehicles possess some level of uniformity. For example, if a person became accustomed to driving a vehicle with a passenger-side mirror radius of curvature of 2,500 mm, the same person might experience disorientation if he or she drove a vehicle with a passenger-side mirror radius of curvature of 500 mm. In Standard No. 111, the allowable range of radii of curvature of between 889 mm and 1,651 mm is based on a study performed by Vector Enterprises, Inc. (Vector) [''Passenger Vehicle, Light Truck, and Van Convex Mirror Optimization and Evaluation Studies,'' August 1980, DOT HS 805–695] in which a number of convex mirrors were evaluated. In this study, Vector found that a radius range of 1,016 mm to 1,524 mm provided the best results. The agency proposed this range in a 1978 notice of proposed rulemaking (NPRM) [43 FR 51657]. However, based on comments by manufacturers to the NPRM, the agency increased the range by 127 mm on each end.

Recent Innovations in Rearview Technology

Non-Planar Mirrors

Since the last significant changes were made to Standard No. 111 in 1982, there have been a number of innovations to rearview technology. The main innovation in mirror technology is the development of a hybrid mirror called an aspheric convex mirror (hereafter referred to as an ''aspheric mirror''). Aspheric mirrors differ from the currently allowed convex mirrors in that they do not have a constant radius of curvature. Generally, these mirrors have a convex area with a large radius of curvature that provides a relatively undistorted view. Typically, this area constitutes approximately 60 to 80 percent of the mirror surface. In this portion of the mirror, the radius can be so large that it will appear to be flat (the radius of curvature of a flat mirror is infinity). The relatively flat portion of the mirror allows the driver to make more accurate speed and distance judgments about the adjacent vehicles than would be possible with a convex mirror. On mirrors currently being manufactured for the aftermarket and for use in other countries, the radius of curvature of this flatter area can range from 2,032 mm to 12,700 mm.

Extending from the large radius of curvature portion of the mirror outward, away from the vehicle, is another area in which the radius of curvature gradually decreases. This portion increases the field of view by smoothly transitioning from the large radius of curvature in the relatively flat portion to a much smaller radius. Because of the variation in radii of curvature, the outside portion of the mirror is distorted much like that of a convex mirror. This is how the larger field of view is attained. With this larger field of view, there could be a reduction or even an elimination of the blind spots that currently exist when flat mirrors are used. The most convex (outer) area of the aspheric mirror can provide a field of view that is as much as 30 percent larger than that of a similarly sized convex mirror with a uniform radius of curvature that satisfies the current standard.

Because these mirrors essentially provide two different types of views to the rear of the vehicle, some aspheric mirrors have an etched line delineating where the portion of the mirror that is the effectively flatter section ends and the more curved section begins. This is done to reduce confusion about which images are distorted and which are less so.

Video Systems

Due to the decrease in the cost of video monitoring equipment in recent years, manufacturers have begun to explore ways to incorporate this technology into motor vehicle rear vision systems. In these prototype systems, video cameras can be placed in almost any position on the interior or exterior of the vehicle. The cameras are wired to monitors in the forward of the vehicle so that they can be viewed by the driver. Because of the many possible mounting locations of the cameras, these systems can provide views to the driver that mirrors are not able to achieve.

There are companies that have already begun to implement this technology. In addition to the mirror

system already required by the standard, some have provided video systems for an auxiliary rear view. The United Parcel Service (UPS) has installed video systems in approximately 65,000 of its delivery trucks. These systems provide the driver with a view of the area directly behind the vehicle and are generally used for backing purposes. The view is similar to that which is provided by an interior mirror in a passenger vehicle, but can afford a much larger field of view close to the vehicle.

One of the benefits of eliminating exterior mirrors on vehicles would be in the area of fuel economy. Removing these mirrors would decrease the wind resistance on a vehicle and thus decrease the amount of fuel consumed. These benefits have been estimated to be as much as two percent fuel savings for large trucks.

Another benefit of a video system is the ability to filter out or reduce visual obstructions or degradations caused by snow, rain, lack of light, or glare from following vehicles' headlamps. By adjusting a monitor's contrast, brightness, or sharpness, the image provided to the driver can be controlled. It is likely that these systems will be controlled by a computer that can detect these visual hindrances and automatically correct for them.

AM General's Petition

In its September 2000 petition, AM General recommended that the agency amend Standard No. 111 to allow manufacturers the option of placing a convex passenger-side rearview mirror on light trucks with a GVWR of more than 4,536 kg, but with a length of less than 508 cm. Currently, these vehicles must have a flat passenger-side mirror with a reflective area of not less than 323 cm^2. As stated above, light trucks with a GVWR 4,536 kg or less may be equipped with either a convex mirror or a flat mirror that meets passenger car requirements or a flat mirror with a reflective area of not less than 126 cm^2. AM General proposed three conditions that these vehicles would have to meet to be equipped with a convex mirror: (1) The mirror should be at least 323 cm^2 in area; (2) it should comply with the convex mirror requirements in Paragraph S5.4 of the standard; and (3) the overall length of the vehicle should be less than 508 cm.

By petitioning the agency, AM General is attempting to solve a problem it has had with a specific vehicle it produces, the Hummer. The Hummer is a four-wheel-drive vehicle that, depending on the configuration, can have a GVWR of between 4,672 kg and 5,488 kg. Because the Hummer has a GVWR that is greater than 4,536 kg, it is required to have a flat passenger-side mirror with a reflective area of not less than 323 cm^2. AM General states that a large majority of Hummer owners are installing small, round convex mirrors on their flat passenger-side mirrors to provide a better rearward field of view, particularly for lane changes. It has received numerous requests from these owners to install a full-sized convex mirror like those offered on similarly sized light trucks. The only explanation AM General has been able to provide to them is that Standard No. 111 does not allow such mirrors on these vehicles. Since the Hummer is essentially the same size as some other full size light trucks, AM General does not think it reasonable that it would be precluded from utilizing the same type of rearview mirrors as them. AM General believes that, although the vehicle owner's application of the small convex mirrors to the flat mirrors may provide some additional benefit, it is not the ultimate solution. A full size convex mirror would provide a larger field of view. In addition, the full size convex mirror would have less distortion, as small add-on convex mirrors, or spot mirrors, tend to have small radii of curvature.

On July 26, 2000, AM General met with the agency to outline its concerns and to give agency staff the opportunity to drive the Hummer with two mirror configurations: a standard 323 cm^2 flat mirror and a 323 cm^2 convex mirror. Three agency engineers examined the two mirror systems on the Hummer and two drove it with these systems. One engineer sat in the Hummer and assessed the fields of view of both mirrors without driving it. All three agreed that, when attempting a lane change to the right, the passenger-side convex mirror provided a better view of the rearward area when compared to the flat one. Because the interior rearview mirror did not provide an adequate rearward view, the driver would have to rely heavily on the outside mirrors. This increased the importance of having a wider field of view in the outside mirrors, even if it could cause greater distortion.

AM General supports its petition by pointing out that in 1975, when Standard No. 111 was amended to require flat passenger-side mirrors on vehicles of over 4,536 kg GVWR, there were no vehicles in use that were comparable to the Hummer. In the rulemaking, the agency's rationale for requiring flat passenger-side mirrors was that a driver of a large vehicle needs an undistorted view when moving in reverse. Also, these larger vehicles did not typically have an interior flat mirror to aid in judging distance. In the final rule, the agency linked vehicle size to weight, stating that vehicles over 4,536 kg GVWR needed special mirror systems ''suited to their large size.'' Also, in the notice of proposed rulemaking (NPRM) that preceded the 1975 final rule [39 FR 15143], the agency stated that ''if the vehicle resembles a passenger car with regard to its rearward visibility potential, the manufacturer will be free to equip it with a passenger car-type mirror system.''

AM General also cites the rationale that the agency used in the preamble to the 1982 final rule allowing convex mirrors on light vehicles, which indicated that the main safety benefit of these mirrors is that they provide ''an expanded field of view of the right, rear quadrant area adjacent to the vehicle, thus reducing the need of the driver to turn around to view that area directly.''

AM General points out that, while the Hummer's overall size is comparable to other full size sport utility vehicles (SUVs) and pickups, its GVWR is considerably greater. To support this, AM General submitted specifications of other light trucks for comparison. These are outlined in the table below.

COMPARATIVE SPECIFICATIONS FOR FULL SIZE SUVS AND PICKUPS (1999 MY)

Make and model	GVWR (kg)	Length (cm)	Height (cm)	Width (cm)
AM General Hummer	4,672–5,488	469	191	220
Full Size SUVs:				
Ford Excursion	3,901	576	202	203
Chevrolet Tahoe	3,084	507	179	195
Chevrolet Suburban	3,901	558	181	194
Jeep Grand Cherokee	2,812	461	176	184
Nissan Pathfinder	2,336	453	170	174

COMPARATIVE SPECIFICATIONS FOR FULL SIZE SUVS AND PICKUPS (1999 MY)—Continued

Make and model	GVWR (kg)	Length (cm)	Height (cm)	Width (cm)
Toyota Landcruiser	3,111	489	186	194
Mitsubishi Montero	2,268	453	168	178
Land Rover Range Rover	2,250	471	182	189
Average	2,958	496	181	189
Full Size Pickups:				
Ford F–250 4-door	3,992	577	194	203
Dodge Ram 2500 Club Cab	3,992	620	185	201
Chevy 3500 Crew Cab	4,536	637	188	239
Toyota Tacoma Xtracab	2,040	516	158	169
Average	3,640	588	181	203

The average GVWR of SUVs was 2,958 kg, with the Ford Excursion and Chevrolet Suburban being the highest. Both had a GVWR of 3,901 kg. The average GVWR of pickups was 3,640 kg, with the Chevrolet 3500 Crew Cab (with dual rear wheels) being the highest at 4,536 kg. The Hummer's greater GVWR is said to be attributable to heavy-duty features such as its drive train and its reinforced frame. While the GVWR of the Hummer is significantly greater than many full size SUVs and pickups, it is comparable in size.

AM General stated that it is not aware of any studies or data available in either this country or any other countries that suggest that its recommended amendment would adversely impact motor vehicle safety. It also states that several countries already have similar requirements. ECE Regulation No. 46, June 1997, permits a wide-angle exterior rearview mirror on vehicles with a GVWR that is less than 7,500 kg. Canadian Standard No. 111 allows vehicles with a GVWR of greater than 4,536 kg to have a passenger-side convex mirror as long as it is at least 323 cm^2 in area. Australian Design Rule 14/02 allows vehicles to have a passenger-side convex mirror if the reflective surface area is equal or greater than that of a flat mirror that meets its field of view requirements.

Mirror Research

On March 13, 1996, the agency convened a public meeting in Romulus, Michigan, to seek information from interested parties on the safety of mirror systems and suggestions for actions to enhance safety. A **Federal Register** notice announcing this meeting [61 FR 4624] also invited written comments. Of the 12 commenters, all stated that there should be a change in the requirements of Standard No. 111, or at least research should be conducted to determine if a change is needed. Attendees at the workshop also identified future human factors research needed for determining rearview mirror performance and design requirements that would insure that drivers could use rearview mirrors safely and effectively. These suggestions are outlined in a technical report titled ''Workshop on Rearview Mirror Human Factors Research Needs: Summary of Recommendations,'' [DOT HS 808 486]. The main thrust of the comments was that the agency should consider amending the standard to allow non-planar mirrors on the driver side of the vehicle. These mirrors are currently used on the driver side of some vehicles in Europe, Japan, and South Africa.

Consistent with these suggestions from the industry, the agency initiated research on non-planar driver side mirrors. The agency contracted with the TNO Human Factors Research Institute (TNO) in the Netherlands to conduct this research. The resulting paper, titled ''Non-planar Driver's Side Rearview Mirrors: A Survey of Mirror Types and European Driver Experience and a Driver Behavior Study on the Influence of Experience and Driver Age on Gap Acceptance and Vehicle Detection,'' [DOT HS 809 149] examined European drivers' use of non-planar driver side mirrors. The study was conducted on European drivers because only flat driver side mirrors are permitted in the U.S. The sample of vehicles in the study consisted of 43 percent with planar driver side mirrors, 34 percent with convex mirrors, and 23 percent with aspherical mirrors. The passenger-side mirrors were predominantly convex (92 percent). The study found that drivers' experience with aspheric mirrors on the driver's side did not generally compensate for the negative effect of accepting smaller gaps, with the exception of drivers who were accustomed to convex mirrors on the driver's side. In addition, there was no increase in the visual workload required to process information in non-planar mirrors. The conclusion was that the relative benefits of using aspheric mirrors on the driver's side could outweigh the possible negative effects.

The agency contracted with the Scientex Corporation (Scientex) to assess different driver side mirror designs and compare them to the standard flat mirror. The report, titled ''Simulator-based Assessment of Driver side Mirrors for Passenger Cars,'' [DOT HS 808 807] examined four non-planar mirrors: (1) Spherically convex, (2) a side-by-side design where 40 percent of the inboard area was spherically convex and the remaining outboard area was aspherically convex, (3) an over-under design that was flat on top and spherically convex below; and, (4) a side-by-side design where 75 percent of the inboard area was spherically convex and the remained outboard area was aspherical. The primary study variables were the size of the field of view, image distortion, and driver age. The test subjects were placed in a laboratory driving simulator and asked to use each mirror type from the perspective of a stationary observer waiting to merge. The subjects were also to use the mirrors as moving observers in a dynamic simulation of a lane change scenario on a freeway. The study found significant effects of mirror type and driver age on lane change decisions and decision times. For slower moving targets, the test data revealed a sharp increase in the size of the gap older drivers found acceptable for making a safe lane change when using a flat mirror, relative to the non-planar mirrors. For the faster moving targets, there was only a small increase in the size of the gap older drivers found acceptable for a safe lane change when using a flat mirror, relative to the non-planar mirrors. Also, the older drivers generally relied on the mirrors more rather than glancing over their shoulders. Scientex believed that this was due to lack of head and neck mobility. Moreover, it showed that there

are benefits to alternative mirrors with expanded fields of view in situations involving immediately adjacent traffic that was nearby (less than one car length behind the driver) when the driver does turn to view the area. Scientex did, however, find some unanswered questions on the effects of speed and distance judgment. Also, it found a need to better understand of the ability of drivers to adjust to non-planar mirrors, and realize their potential benefits.

Discussion of AM General Petition and General Mirror Issues

While the agency agrees that it seems reasonable to allow the Hummer to be equipped with a convex mirror, we believe that it would be shortsighted only to amend Standard No. 111 in the manner requested by AM General. Amending the standard to allow the one known current vehicle model to utilize one widely-available type of technology would have little effect on the overall safety of motor vehicles five years from now. Rather than only allowing the Hummer to have passenger-side convex mirrors, the agency would like to take this opportunity to also explore amending the standard to allow appropriate new mirror and other rearview technology to be utilized by all vehicles. By amending the standard in this manner, not only will AM General be able to equip its Hummers with what it believes are safer mirrors, but new mirror technology will be able to be incorporated on all passenger vehicles.

Research conducted by the agency and other entities, which is outlined above, has led the agency to believe that allowing non-planar mirrors on the driver and passenger side would provide an increased field of view and, thus, eliminate blind spots. Other countries, mostly in Europe, have successfully utilized new technology such as aspheric mirrors to enhance rearward vision.

However, while allowing the use of new mirror technology may be helpful, we are concerned that some drivers may experience difficulties. As the aforementioned TNO and Scientex studies found, there are issues with non-planar mirrors that need to be addressed. Both studies found that some drivers had difficulty making safe lane change decisions using non-planar mirrors. Scientex has recommended that this area be further studied to determine why these problems occur.

One way to account for the drivers who experience problems with the new technology is to include some level of interchangeability. For example, if a driver purchases a vehicle with an aspheric mirror and then determines that it is unacceptable, a flat or convex mirror would be available to put in its place. If the driver could not easily replace the problematic mirror, there might be a tendency for him or her to simply live with the problem and perhaps not utilize the mirror. Drivers forced to use mirror systems with which they are not comfortable would obviously not benefit from the improved technology; on the contrary, there would be a disbenefit. Not using a mirror could increase the risk of a crash.

An issue that needs to be resolved is how large the radius of curvature of a mirror must be to be perceived as flat. The agency believes that drivers using convex mirrors with a radius of curvature in the 6,350 mm to 12,700 mm range would experience little to no difference when compared to using one that is flat. Future research in this area could lead to an equivalent flatness specification that would set the minimum radius of curvature at which a mirror provides the same safety benefits as a mirror with an infinite radius of curvature.

As the standard is presently written, an aspheric mirror with a flat area of infinite radius that produced the minimum field of view would be allowed. The outer convex area could be considered a supplemental mirror. However, due to technological limitations, this is not currently possible. As stated above, we understand that the largest attainable radius of curvature for an aspheric mirror is about 12,700 mm. If an equivalent flatness specification was determined, perhaps the advantages of aspheric mirrors could be fully utilized while maintaining a large portion of the mirror for speed and distance judgment.

Regarding the cost of such an amendment, allowing an option to replace a flat mirror with a convex mirror should pose no incremental burden since no regulatory requirement mandating a convex mirror is contemplated.

Another issue the agency has been exploring is that of glare produced in a vehicle's mirrors from a following vehicle's headlamps. In the past few years, consumers have registered many complaints with the agency about high-mounted headlamps on some larger light trucks. The headlamps on these vehicles are mounted high enough to place the more intense part of their low beam on a vehicle's mirrors. These high-mounted headlamps are viewed by many drivers as dangerous and intimidating, in addition to being annoying and disabling.

One approach to this problem is to require enhanced mirrors on vehicles. Automatic electro-mechanical dimming interior mirrors have been available for decades as standard equipment on luxury models and as an option in many vehicles. More recently, the industry has developed electronically dimming mirrors, typically called photochromic and liquid crystal automatic dimming mirrors. The advantage of these mirrors is that they reduce the intensities of incoming light at least as well as manual or electro-mechanical auto-dimming interior mirrors, but they also reduce glare reflected from the outside mirrors as well. The primary disadvantages are that these mirrors can add $100 or more to the cost of a new vehicle and they can lessen only the glare from following vehicles. There are questions below which attempt to determine whether there should be requirements for such systems.

Below are a number of questions that deal specifically with AM General's petition as well as with the overall philosophy of amending Standard No. 111 to allow new technology to be utilized. To be considered, you must provide a rationale for your answer.

1. Is it reasonable for the agency to permit vehicles like the Hummer to use passenger-side convex mirrors? What are the safety factors that lead to this conclusion?

2. For use of a passenger-side convex mirror on a vehicle that is heavier than 4,536 kg GVWR like the Hummer, should there be a limit of 508 cm on the length of a vehicle as AM General suggested? Is some other maximum vehicle length more appropriate? Should there be requirements based on vehicle height and/or width? What safety factors are involved in these issues?

3. Should Standard No. 111 be amended to permit aspheric mirrors on the passenger side and/or aspheric and convex mirrors on the driver side? What safety rationale is there for such conclusions? At what vehicle dimensions, if any, (length, width, height, and weight) should these mirrors be restricted?

4. If aspheric mirrors were permitted, should a definition of effective flatness be developed? As discussed above, the flatter area of an aspheric mirror that provides the speed and distance judgment is not perfectly flat, but the radius of curvature is usually large enough such that a driver would perceive the area as being flat.

5. At what radius of curvature does the human eye begin to perceive a mirror as flat? At what radius of curvature do depth and closure rate distortion begin to be a safety factor?

6. Should the effectively flat portion of the aspheric mirror be some minimum size, as is required of flat mirrors?

7. Should the agency require an etched line on aspheric mirrors to delineate where the intersection of the flat portion of the mirror and the markedly curved portion begins? Why?

8. Should the radius of curvature in the more convex portion of aspheric mirrors be limited? What is a reasonable range of allowable radii of curvature? Should the size of this section be limited? What is a reasonable minimum/maximum size for this portion of the mirror? To what extent would allowing multiple types of mirrors compromise safety? How could these effects be minimized? Please provide the basis for these answers.

9. Should the proportion of the size of the effectively flat area to the curved area be specified on aspheric mirrors? Should there be separate field of view requirements for each of the areas? Why?

10. We are aware of the use of aspheric mirrors on vehicles used in Europe and are interested in examining the criteria used for determining their specific characteristics. How much do these mirrors vary within the same or different body sizes and styles? Is there any data on the safety benefits and/or detriments of these mirrors as used in Europe? Please be specific.

11. Should all vehicles with mirror systems using aspheric mirrors on the passenger side and aspheric or convex on the driver side have as a replacement, a flat or convex reflective element that is readily available for consumers to purchase? Should consumers be required to pay for such a replacement, or should they be available at no charge? How would the answers to these questions affect the decision by manufacturers to offer optional mirror systems?

12. Convex and aspheric mirrors can achieve a larger field of view than a like-sized flat mirror. Therefore, with a system that provides interchangeability, the convex and aspheric mirrors will most likely need to be made larger than would be required to accommodate the possibility of replacing with a flat mirror. How would this affect the implementation of optional mirror systems? What would be the cost of supplying interchangeability?

13. Should aspheric or convex mirrors be made mandatory on the driver or passenger side? Please provide justification.

14. Does the agency need to require interior and/or exterior dimming mirrors? Why?

15. If dimming mirrors are required, should they be automatic or actuated by the driver?

16. What price is the public willing to pay for fully automatic inside and outside dimming mirrors on passenger cars? What are they willing to pay for these mirrors on light trucks?

17. What are the benefits and disbenefits of mirror configurations that include more than one mirror surface? An agency field evaluation of commercial van mirrors ['Field Evaluation of Rearview Mirror Systems for Commercial Vehicles,'' September 1985, DOT HS 806–948] found that vehicles equipped with a 40-inch radius of curvature convex mirror had an 18 percent reduction in crashes compared to a dual flat and convex mirror configuration.

18. Are there any other issues that should be addressed in the review of the standard? Please be specific and provide supporting data.

Discussion of Video System Issues

While video systems can be coupled with existing mirrors to create an enhanced view to the driver, it is possible that these systems could completely replace current mirror systems in vehicles. This could present some unique problems. First, unlike mirror systems, video systems consist of electronic equipment that rely on electrical current for activation. If the system fails due to a fault with the electronic components or a lack of power, the driver could be without a rear field of view. The agency is concerned that, if there is not a fail-safe mode for these systems, an unsafe situation could occur. The agency has already prohibited liquid crystal dimmable mirrors because of the insurmountable fail-safe issues.

Replacing mirrors on the outside of the vehicle with video screens on the inside of the vehicle would be a significant change in the manner by which drivers currently obtain the information. Drivers have become used to conventional mirrors, and some could have problems relying on a video screen for the same information. These possible difficulties could be exacerbated by the placement of the monitors. For example, if the monitors were placed outboard as close to the area where the outside rearview mirrors would be, drivers might not experience many problems with the transition. By placing them near the area where conventional mirrors are placed, the geometrical perspective to the object being viewed that is given by the mirrors would be preserved. However, if the monitors were more centrally located on the instrument panel, the lack of geometric perspective could leave drivers confused as to the relationship of what they are seeing in the monitor to the area around their vehicle. The agency believes that manufacturers are currently attempting to determine how to insure that video systems are easy to use and acceptable to drivers.

As with the optional mirror systems discussed above, allowing the use of video systems would provide an option to manufacturers, and, thus, there would be no cost burden imposed by such a permissive rule change.

Below are questions related to the use of video systems for rear vision. To be considered, you must provide a rationale for your answers.

1. Under what condition, if any, would any failure of a video system be considered acceptable? Why?

2. Given the prohibition of liquid crystal mirrors because of the potential for electrical failure, is there any reason to consider video systems? If so, explain why these would be at least as reliable as a conventional glass mirror.

3. Are there any safety studies available on video systems that would show that their overall safety would be great enough to offset any loss of safety from a failure?

4. What are the long-term safety consequences of failure to replace a failed video system component because of the high cost and/or lack of availability? What additional requirements should be imposed on these optional systems to assure that replacement of failed components is as likely as replacement of today's mirrors?

5. If a video system failure were deemed to be an acceptable risk, should the agency require these systems to provide a failure alert to warn the driver of a system problem? If so, what performance requirements should be established for the system failure alert? If not, please explain why.

6. Should there be a backup system in case of failure? If so, please provide a description of a possible system and why it would achieve an acceptable safety risk. If not, please explain why.

7. Should the location for the video monitors be specified? It is the agency's initial inclination that they should be placed as close as possible to where currently used mirrors are located. What studies have been done to show that any other location is acceptable?

8. If the monitors were placed in an area away from where typical mirrors are mounted, how well would drivers adapt to the new location?

9. Should the agency conduct human factors analysis to examine the interface

between the video screen and drivers? If so, what factors should be studied?

10. For example, what minimum image size should be specified for systems using a video monitor? Should that size be different for different monitor locations?

11. Should the monitor on these systems be color or black and white? Why?

12. What type of control over the image characteristics should the driver have with these monitors? Should they be able to control contrast, brightness, sharpness, image size, magnification, or some other characteristic?

13. What would be the cost of installing a video system in a passenger vehicle to be used specifically for backing operations, similar to the system used in recent Infiniti Q45 models?

14. The agency has been examining methods for reducing reversing crashes. Video systems are one of the methods some users and manufacturers, such as UPS and Infiniti, have used to accomplish this. Should manufacturers choose to use a video system for the side view area, what would be the cost of adding a system to be used specifically for backing?

Discussion of Ms. Sanford's Petition

In her September 1999 petition, Ms. Sanford asked us to amend Standard No. 111 to require that all ''commercial trucks traveling on the interstate highway system'' have convex mirrors mounted on their front right and left fenders. She claims that when convex mirrors are mounted on the front fenders, they eliminate a blind spot that is caused by the driver's elevated position with respect to most passenger cars. They are also helpful for lane changes. Ms. Sanford was involved in a crash with a heavy truck and she believes the incident could have been avoided had the truck been equipped with these fender-mounted convex mirrors.

The heavy trucking industry is currently using these types of mirrors extensively. Rulemaking staff conducted two informal counts of the number of trucks that use these mirrors. The two counts were done on Interstate 95 between Washington, DC to Philadelphia, PA. It was found that approximately two-thirds of the large trucks (excluding cab over designs) were equipped with the mirrors on just the right front fender. Approximately 50 percent had them on both front fenders. Although these counts cannot provide information about the value of these mirrors, it does show that a large portion of the trucking industry sees value in them.

Prior to the Sanford petition, the agency had decided to conduct research on heavy truck mirror systems, including fender-mounted mirrors. The objective of the study is to assess side and rearward visibility of heavy trucks, document current mirror design and aiming, develop a method to evaluate mirror fields of view, and recommend enhanced mirror design and aiming. The study should be completed by the Fall of 2003.

Below are questions related to Ms. Sanford's petition:

1. What percentage of new trucks is sold with these types of mirrors on their front fenders? What is the volume of these types of mirrors that are sold in the aftermarket?

2. What percentage of trucks have the mirrors mounted on just the right or left fender? What percentage has them on both fenders?

3. Do data exist to show the effectiveness of these mirrors in reducing lane change crashes?

4. Because a portion of the national truck fleet already uses these types of mirrors, what would be the cost burden to the industry if one or two mirrors were required?

5. If determined to be necessary for safety, the agency would need to determine whether to require these as just OEM or also as a requirement for vehicles in use. What would be the cost and lead-time necessary for these?

6. What performance specifications, *e.g.*, field of view, vehicle dimensions, mirror dimensions, mounting, labeling, should be established for these mirrors, if any?

7. What truck configuration(s) would be best suited for this type of mirror system?

References

de Vos, Alexander. September 2000. Non-planar Driver's Side Rearview Mirrors: A Survey of Mirror Types and European Driver Experience and a Driver Behavior Study on the Influence of Experience and Driver Age on Gap Acceptance and Vehicle Detection. Report No. DOT HS 809 149.

Flannagan, Michael, J.; Sivak, Michael. August 1996. Workshop on Rearview Mirror Human Factors Research Needs: Summary of Recommendations. Report No. DOT HS 808 486.

Staplin, Loren; Lococo, Kathy, Sim, James J., Gish, Kenneth. October 1998. Simulator-based Assessment of Driver side Mirrors for Passenger Cars. Report No. DOT HS 808 807.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This request for comment was not reviewed under Executive Order 12866 (Regulatory Planning and Review). The agency has analyzed the impact of this request for comment and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency anticipates if a proposal and ultimately a final rule should result from this request for comment, new requirements would not be imposed on manufacturers with respect to currently regulated systems. The request for comment seeks to determine the ramifications of allowing new optional rearview technology on motor vehicles.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information that you do not want to be made public, under a claim of confidentiality, you should submit three copies of your complete submission to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT.** This submission must include the information that you are claiming to be private, that is, confidential business information. In addition, you should

submit two copies from which you have deleted the private information, to Docket Management at the address given at the beginning of this document under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter that provides the information specified in our confidential business information regulation, 49 CFR Part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES.**

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were ''NHTSA–2000–1234,'' you would type ''1234.''

(4) After typing the docket number, click on ''search.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the ''pdf'' versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: January 16, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–1353 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for a Petition To List the Mountain Quail as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the mountain quail *(Oreortyx pictus)* under the Endangered Species Act (Act) of 1973, as amended. We find the petition does not present substantial scientific or commercial information indicating that listing this species may be warranted.

DATES: The finding announced in this document was made on January 10, 2003.

ADDRESSES: The complete file for this finding is available for inspection, by appointment, during normal business hours at the U. S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 South Vinnell Way, Suite 368, Boise, ID 83709.

FOR FURTHER INFORMATION CONTACT: Bob Ruesink, Supervisor, Snake River Fish and Wildlife Office (*see* **ADDRESSES** section) (telephone: 208/378–5243; facsimile: 208/378–5243; electronic mail: *Bob_Ruesink@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time we make the finding. To the maximum extent practicable, this finding is to be made within 90 days of our receipt of the petition, and the notice of the finding is to be published promptly in the **Federal Register**. Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424J). If we find that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated under our internal candidate assessment process.

On March 28, 2000, we received a petition, dated March 15, 2000, from Rob Kavanaugh, Idaho Watersheds Project, Committee for Idaho's High Desert, and the Spokane Audubon Society requesting that the mountain quail *(Oreortyx pictus),* occurring in the northern and western Great Basin, the Interior Columbia Basin, and lands west to the Cascade Crest within Washington and Oregon, be listed as a threatened or endangered distinct population segment (DPS) under the Act (Kavanaugh *et al.* 2000). The petition clearly identified itself as such and contained the names and addresses of the petitioners.

Accompanying the petition was information related to the taxonomy, life history, demographics, translocations, genetics, habitats, threats, and the past and present distribution of mountain quail. The petitioners contend that mountain quail populations occurring in the proposed DPS have sustained a dramatic range contraction caused by extensive loss of riparian habitats, loss of woody vegetation associated with riparian habitats, loss of interfacing upland shrub habitats, loss of plant species diversity, and simplification of habitats. The petitioners claim that 80 to 90 percent of riparian habitats essential to the mountain quail in arid interior lands have been lost, fragmented, or altered. This is in contrast to the more humid coastal forests of Oregon, Washington, and California, where mountain quail populations are more abundant and widespread due to broad areas of continuous habitat. In order to determine if substantial information is available to indicate that the petitioned action may be warranted, we have reviewed the following: the subject petition, literature cited in the petition, information provided by recognized experts or agencies cited in the petition, and information otherwise available in Service files.

This 90-day petition finding is made in accordance with a settlement agreement that requires us to complete a finding by January 15, 2003

(*Committee for Idaho's High Desert et al.* v. *Badgley et al.* (Civ. No. 01–1834–JO)).

The petitioner's request is to list mountain quail populations found throughout historically occupied portions east of the Cascade Crest in Washington and Oregon, historically occupied portions of western Idaho, and historically occupied portions east of the California/Nevada border south to the proximate vicinity of the Palmetto Mountains of southwestern Nevada.

Mountain quail are members of the family of New World quail, Odontophorinae, within the Order Galliformes (Gutierrez *et al.* 1983). They were first described as *Ortyx picta* by D. Douglas in 1829, but the type specimen was lost and the type locality is unknown (Gutierrez and Delehanty 1999).

Five subspecies of mountain quail recognized by the American Ornithological Union have been described using phenotypic appearances and geographical residency (Gutierrez and Delehanty 1999, Vogel and Reese 2002). The five subspecies by geographical areas are: *Oreortyx pictus pictus,* a resident in mountain regions of extreme western Nevada, the western side of the Cascade Range in southern Washington and south to the Sierra Nevada and inner Coast Ranges of California; *O. p. palmeri,* found in the western Coast Range from Washington south to San Luis Obispo County, California; *O. p. eremophilus,* a resident from the southern Sierra Nevada and central and southern Coast Ranges of California south through the Transverse Peninsular, Mexico; *O. p. russelli,* found in the Little San Bernardino Mountains, California; and *O. p. confinis,* a resident on northern Baja California, Mexico, primarily Sierra Juarez and Sierra San Pedro Mountains (Gutierrez and Delehanty 1999).

Although these five subspecies are recognized by the American Ornithological Union, these designations are considered ambiguous. No quantitative estimates of morphological variation have been published, and genetic validity of these subspecies distinctions has not been substantiated through any peer-reviewed published studies. Gutierrez and Delehanty (1999) stated that these designations are based on ''poorly defined comparative and ill-marked plumage characters; therefore, both subspecies and subspecies range are considered dubious.'' Genetic analysis is needed to clearly establish whether there is subspecies designation across the geographic range of mountain quail (Vogel and Reese 2002).

The mountain quail is the largest North American quail north of Mexico (Gutierrez and Delehanty 1999). Males are slightly larger than females (264 to 308 millimeters (10.5 to 11.5 inches) in length and approximately 235 grams (7.6 ounces) in weight), but size is not a reliable indicator of sex. The sexes are monomorphic (similar in appearance). An adult's plumage consists of white side bars and a chestnut throat-patch with black, below a brilliant slate-blue head and neck. The mountain quail also has a long slender straight head plume composed of two feathers.

Mountain quail occur in shrub-dominated communities that vary across habitat types throughout the range of the species (Vogel and Reese 1995, Gutierrez and Delehanty 1999). These habitats include chaparral, mixed desert scrub of the Mojave Desert, and early successional-stage shrub vegetation following fire, logging, and other disturbances. In the drier eastern portions of its range, mountain quail are normally found in steeper slope areas along riparian corridors consisting of mountain and riparian shrub communities. Within all habitat types, mountain quail are notable for their seasonal migrations between breeding and wintering areas (Vogel and Reese 1995, Delehanty 1997). These migrations vary from significant altitudinal migrations of up to 80 kilometers (50 miles) among populations that summer at high elevation (*i.e.*, Sierra Nevada, Cascade Range), to short altitudinal movements in low-elevation coastal areas to escape winter snows.

On the basis of several food habit studies summarized by Vogel and Reese (1995) and Gutierrez and Delehanty (1999), we know that mountain quail eat primarily plant material throughout the year. Invertebrate animal matter makes up approximately 0 to 5 percent of the diet, although young mountain quail up to 8 weeks of age eat up to 20 percent animal matter (ants, beetles, and other invertebrates). Plant material consumed includes perennial seeds, fruits, flowers, and leaves, annual forbs and legumes, and mushrooms. Gutierrez (1980) describes the mountain quail as a ''sequential specialist'' that concentrates on food resources as they become seasonally available and abundant. The species uses diverse food-capturing methods, including digging for subterranean bulbs of some plants (*e.g., Lithophragma spp., Brodiaea* spp.), and climbing shrubs and trees for fruits and seeds.

Similar to other quail species, mountain quail are able to breed at 1 year of age, although reproduction is dependent upon the condition of breeding birds and is strongly influenced by winter/spring rainfall. Pair formation is thought to occur during late winter and early spring with nesting normally occurring from March to July, depending upon local climate, altitude, and latitude (Gutierrez and Delehanty 1999). Both male and female form incubation patches. Mountain quail are unique in that females often lay two clutches averaging 11 to 12 eggs, with male birds incubating the first clutch and females the second. This phenomenon is termed simultaneous multi-clutching (Delehanty 1997). The incubation period averages 24 days (range 23 to 25 days) and estimates of nest success from a limited number of studies averaged over 55 percent (Vogel and Reese 1995). Substantial evidence suggests that males incubate and then brood recently hatched young (Delehanty 1997, Pope 2002). Many mountain quail coveys are assumed to be family groups comprised of adults and juveniles that remain together until the next year's breeding season.

Mountain quail are presumed to be short-lived and subject to high levels of predation similar to other New World quail. On the basis of limited data, sex ratios are assumed to be nearly 1:1 for adults (Vogel and Reese 1995). Because mountain quail inhabit dense habitats and rugged terrain, populations can vary annually. Population surveys are difficult to conduct, and long-term population size and density studies are lacking. Data from the few studies conducted over the years have revealed mountain quail densities ranging from 9 to 54 birds/100 hectares (ha) (9 to 54 birds/247 acres (ac)) at four study sites in northern California, 21 birds/100 ha (21 birds/247 ac) in coastal California, and 30 birds/100 ha (30 birds/247 ac) and 28 birds/100 ha (28 birds/247 ac) on Klamath Mountains and Sierra Nevada sites, respectively (as summarized by Vogel and Reese 1995).

Accipiters, particularly Cooper's hawk (Accipiter cooperi), sharp-shinned hawk *(Accipiter striatus),* and the northern goshawk *(Accipiter gentilis),* are major predators of adult and young mountain quail (Gutierrez and Delehanty 1999, Vogel and Reese 2002). Other known predators include great horned owl *(Bubo virginianus),* coyote *(Canis latrans),* bobcat *(Lynx rufus),* gray fox *(Urocyon cinereoargenteus),* and rattlesnake (*Crotalus* spp.). Significant predation occurs on chicks during several days following hatching and when coveys are limited to habitats near water (Vogel and Reese 1995).

Rangewide, mountain quail are distributed in five western states,

including California, Washington, Oregon, Nevada, and Idaho, as well as Baja Norte, Mexico (Gutierrez and Delehanty 1999, Crawford 2000). They are also found in small disjunct populations as introduced birds on Vancouver Island, British Columbia, and on several islands within the San Juan Islands of Washington (Vogel and Reese 1995, Gutierrez and Delehanty 1999). Vogel and Reese (1998) quote R.D. Mallette (date unknown) that in the early 1970s, mountain quail were ''widely distributed over approximately 45 percent of the state [California] in suitable habitat in the mountainous areas from Mexico to the Oregon borders.'' Within the United States, California contains the largest populations and the widest distribution of this species. Mountain quail are legally hunted in many counties of California (California Department of Fish and Game 2002).

In Nevada, the historic range of mountain quail in the Great Basin is poorly understood, with very little information available on their native distribution (Vogel and Reese 1995, Gutierrez and Delehanty 1999, Crawford 2000). Several authors, quoted by Vogel and Reese (1995), reported that mountain quail were common on both slopes of the Sierra Nevada mountains (including Nevada) in the 1920s and ''a sparse resident in the mountainous areas of western Nevada.'' Guitierrez and Delehanty (1999) report that mountain quail occupy spur ranges of the eastern Sierra Nevada Range in western Nevada and are found in the higher foothill areas to the Sierra Crest where suitable habitat occurs. They also occur as small, scattered populations in the ''Toiyobe, Desatoya, Jackson, and Santa Rosa Ranges of northern Nevada.'' In addition, Vogel and Reese (2002) present anecdotal evidence of mountain quail releases in the State, beginning in the 1870s and continuing into the 1930s or early 1940s.

Since the 1940s, hunter surveys and harvest reports indicate that populations have undergone local extinctions throughout their historic range in Nevada (Brennan 1994). From the 1950s to the 1980s, extensive range fires, invasive plants, reservoir construction, and livestock overgrazing have impacted or eliminated large areas of mountain quail habitat and as a consequence, mountain quail numbers and distribution have declined in many areas of Nevada. However, based on recent Nevada Division of Wildlife (NDOW) surveys, mountain quail have remained stable in the eastern Sierra Nevada mountains of Nevada (Vogel and Reese 2002). Since 1986, NDOW has released mountain quail into areas that they believe historically supported mountain quail, currently contain mountain quail, and/or sustain suitable habitat. From 1986 to 2002, a total of 1,293 birds have been translocated to Nye, Churchill, Pershing, Washoe, Elko, and Lander counties in Nevada (Vogel and Reese 2002). All of these mountain quail were captured from outside the petitioned DPS at the China Lakes Naval Air Weapons Station in the Mojave Desert of California (Vogel and Reese 2002).

In Idaho, general information regarding the native distribution of mountain quail is ambiguous, although some evidence suggests mountain quail were present prior to European settlement. Three studies cited in Vogel and Reese (2002) describe possible archeological evidence of mountain quail in Idaho prior to the 1800s. Gruhn (1961) documented one specimen of mountain quail from bones in Wilson Butte Cave, Jerome County, south-central Idaho; Murphey (1991) reported a possible mountain quail pictograph found at the Jarbidge rock site, Jerome County, southwestern Idaho; and Rudolph (1995) identified mountain quail bones from the Hetrick site in the Weiser River Valley, Washington County. The pictograph is an abstract rendition that portrays a gallinaceous-like bird with prominent barring on the side of the body, heavy bill and feet, and top-knot, which is short and curved over the top of the head as in California quail (*Callipepla californica*) (Crawford 2000). The mountain quail bone material was identified using comparative techniques of bones known to be mountain quail. The possible mountain quail bone material collected from these two archaeological sites may be positively verified by protein synthesis analysis and dated using radiometric techniques (Miller, Faunal Analysis and CRM Services, pers. comm. 2002). Crawford (2000) suggests that these birds may represent remnant populations from Pleistocene glaciation.

Today, mountain quail in Idaho occur at the extreme northeastern edge of their range-wide distribution. Mountain quail were translocated successfully in Idaho beginning in the late 1800s (Crawford 2000, Vogel and Reese 2002). For example, as summarized by Crawford (2000), mountain quail were translocated to Kootenai County using birds captured from western Washington in 1897. Other mountain quail were translocated to Ada, Owyhee, and Lincoln counties in the 1920s, although the origin of these birds is generally unknown. Mountain quail were present in the 1930s throughout the central and southwestern areas of Idaho (Vogel and Reese 1998). In the 1950s, they were still found along riparian areas in central and southwestern Idaho, but overall numbers had declined since the 1930s, particularly in Nez Perce and Latah counties. Various causes of decline have been identified. Vogel and Reese (1998) cited a paper by T.B. Murray (1938) that suggested that drought and habitat alterations reduced mountain quail numbers by more than 50 percent in western Idaho, and that suitable food and cover were also reduced by more than 50 percent from the turn of the century until the 1930s.

During the 1980s, numbers declined steadily, and the only remaining populations that exist now are in the lower Salmon and Snake River drainages and the foothill and mountain areas of the Boise River drainage (Robertson 1989). Although mountain quail have been infrequently sighted in these areas since the 1980s, recent mating call surveys in several areas of the Boise River drainage found no evidence of their presence (Kniesel 2002). The hunting season for mountain quail in Idaho was closed in 1984.

The first recorded information on mountain quail in Oregon was of a specimen collected in 1806 by Reubin Field, a member of the Lewis and Clark expedition (Jackle *et al.* 2002, Pope 2002). During the same expedition, two other mountain quail were collected near Rooster Rock State Park, Multnomah County, along the Columbia River. Mountain quail translocations began as early as 1860 in the Pacific Northwest, with one reference that all mountain quail in the Willamette Valley of Oregon resulted from introductions (Crawford 2000). These translocations, combined with natural and subsequent movement patterns, may have accounted for more recent (post-1900) distributions of mountain quail in many parts of eastern Oregon and into western Idaho (Jackle *et al.* 2002). Vogel and Reese (1995) reported that historically mountain quail occupied more extensive areas in Oregon than they did in the early 1900s, primarily because of the ''open burns and logged-over areas that have replaced enormous areas of the original dense forest of the Pacific Northwest.'' Recently logged areas in the Cascades, Coast Range, and Klamath mountains provide excellent shrub habitat for mountain quail and may have allowed some populations on the west slope of the Cascades to expand their range (Vogel and Reese 1995). Gabrielson and Jewett (1940), as referenced by Vogel and Reese (1995), reported mountain quail in suitable

habitat throughout the Coast and Cascade Ranges and the Rogue, Umpqua, and Willamette valleys of western Oregon. In contrast, populations in eastern Oregon occupy riparian shrub habitats that have declined from historic levels. Current data indicate that mountain quail are found in low densities in Union, Wallowa, Wasco, and Wheeler counties, and are moderately abundant in Crook, Deschutes, Grant, Jefferson, and Klamath Counties (Vogel and Reese 2002).

Crawford (2000) concludes that the distribution and abundance of mountain quail remained relatively constant during the mid-twentieth century throughout Oregon. But within the past 25 years, populations outside of the early historic distribution have suffered substantial declines, whereas populations in the Coast and Cascade Ranges of Oregon continue to remain abundant. These downward trends in populations have prompted Pope (2002) and Jackle *et al.* (2002) to undertake comparative studies by of populations found west of the Cascade Crest (which are stable or abundant) with populations found in central and eastern Oregon. Both studies have demonstrated that an effective restoration effort for mountain quail is feasible using wild birds trapped in western Oregon and released in central and eastern Oregon. However, translocations programs will be more effective when evaluated through post-release monitoring. Oregon still maintains a hunting season in western and northeastern Oregon for mountain quail.

In Washington, following translocations of mountain quail from the 1860s to the early 1900s, historical accounts reported mountain quail west of the Cascade Mountains and in the Blue Mountains in southeastern Washington (Crawford 2000). Mountain quail are currently found throughout portions of western Washington with the strongest population found on the Olympic Peninsula (Washington Department of Wildlife (WDW) 1993; Ware, Washington Department of Fish and Wildlife, pers. comm. 2002). They have been recorded in the past in Mason, Kitsap, Pierce, King, Thurston, Clark, Skamania, Garfield, Columbia, Asotin, and Walla Walla Counties, although the precise delineation of the species's distribution is poorly understood (WDW 1993) and they may be extirpated from Asotin, Garfield, and Columbia Counties (Ware pers. comm. 2002). As noted in Crawford (2000), translocations also took place on Whidbey Island, San Juan Island, and elsewhere in Washington.

Little evidence suggests that mountain quail were native to Washington (WDW 1993, Vogel and Reese 1995). Vogel and Reese (1995), in their research on the topic of native status, found that many authors believed that the Columbia River was the northern limit of the species' range, and that mountain quail were introduced to Washington. Birds from multiple sources were translocated into Washington resulting in mixing of various subspecies. Current distributions in western Washington have remained stable, but populations in eastern Washington have been in a severe decline, as reported by Vogel and Reese (2002). Washington maintains a hunting season for mountain quail in the western part of the State only.

The petitioners requested that we list those populations of mountain quail east of the Cascade Crest and Sierra Mountain Ranges within Washington, Oregon, Idaho, and Nevada as a threatened or endangered DPS of the species under the Act. Under our DPS policy (61 FR 4722; February 7, 1996), we use three elements to assess whether a population under consideration for listing may be recognized as a DPS: (1) A population segment's discreteness from the remainder of the taxon; (2) the population segment's significance to the taxon to which it belongs; and (3) ''[t]he population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened?).'' If we determine that a population being considered for listing may represent a DPS, then the level of threat to the population is evaluated on the basis of the five listing factors established by the Act to determine if listing it as either threatened or endangered may be warranted.

A population segment of a vertebrate species may be considered discrete if it satisfies either of the following conditions. The first condition is whether the species' population is markedly separated, or isolated, from other populations of the same taxon ''as a consequence of physical, physiological, ecological, or behavioral factors.'' When these four factors are evaluated, ''[q]uantitative measures of genetic or morphological discontinuity may provide evidence of this separation.'' The second condition, which does not apply here, is whether the population segment be ''delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.''

In determining the discreteness, or isolation, of mountain quail populations found within the proposed DPS, one of the factors we consider is physical separation from the rest of the taxon. The petitioners did not provide substantial information, either through text description, map attachments, or references in the petition, to demonstrate that the populations of mountain quail along the western border of the proposed DPS are physically isolated from nearby eastern populations in Oregon and Nevada.

Although mountain quail are associated with separate locations within the proposed DPS on a landscape consisting of various mountain ranges and intervening valleys, they are able to move between these areas (Gutierrez and Delehanty 1999; Pope, Oregon State University, pers. comm. 2002). No physical barrier appears to exist that would preclude the movement of birds across this landscape and hypothetical boundary separating the petitioned and non-petitioned areas and prevent mountain quail populations from intermixing. For example, the current distribution of mountain quail, as depicted in the petition, shows contiguous distribution between California and Nevada, and also between Oregon and California. Exceptions to this continuity exist: some populations in the extreme eastern range of mountain quail are presently disjunct from natural exchange with mountain quail outside the petitioned area. For example, current distributions of mountain quail are disjunct in some areas of Idaho and northern Nevada. However, when we consider the proposed DPS boundaries as delineated by the petitioners, there is a blend of both disjunct populations and continuous population areas that do not meet the discreteness standard under our DPS policy.

Further complicating the question of discreteness is the documented translocation of mountain quail from areas outside and within the proposed DPS geographical area during the past 130 years (Vogel and Reese 1995, 1998; Jobanek 1997; Crawford 2000; Jackle *et al.* 2002). Crawford (2000) in his review of the subject found documented releases of mountain quail in western Idaho and throughout Oregon and Washington. Vogel and Reese (2002) in their review of Nevada found anecdotal evidence that ''sportsmen, ranchers, and miners released mountain quail across the state beginning in the 1870s and continuing to the 1930s or early 40s.'' In their review of the distribution of 18

species of gallinaceous birds of North America, Aldrich and Duvall (1955) noted that mountain quail were native to the Pacific coastal region of the extreme western United States. They state that mountain quail were established after introductions into the mountains of eastern Washington, western Idaho, eastern Oregon, and central Nevada.

During the past 20 years, information addressing translocations of mountain quail by State agencies has been better documented than it had been in prior years. For example, a total of 1,293 mountain quail have been released in Nevada counties, including Nye, Churchhill, Pershing, Washoe, Elko, and Lander, since 1986 (Vogel and Reese 2002). All birds were captured at the China Lakes Naval Weapons Station, Mojave Desert, California, an area that is outside and west of the proposed DPS geographical area. In Oregon, 75 mountain quail were captured in the western Cascade Mountain Range of southwestern Oregon and translocated into northeastern Oregon between 1997 and 1999, partly to assess breeding range movements of both resident and translocated mountain quail (Pope 2002). Additionally, a total of 209 mountain quail were translocated to three separate locations in central Oregon in 2001 using birds that were captured in western Oregon (Jackle *et al.* 2002) as part of a restoration plan.

The DPS policy states that genetic information may be used to provide evidence of separation. The numerous historic and recent translocation efforts as discussed above may have lead to genetic homogenization of mountain quail. Assessing evidence of genetic separation among either historic or current populations of mountain quail is likely to be complicated by past translocation efforts. No comprehensive genetic evaluation for discreteness of mountain quail rangewide or within in the proposed DPS is currently available. Also, the petitioners submit that the genetic differentiation of mountain quail subspecies or populations has not been adequately tested, and refer to unpublished preliminary data that indicate no genetic differences exist among mountain quail in western North America (Kavanaugh *et al.* 2000).

Additionally, in evaluating information regarding translocations, it is difficult to discern which are introductions, reintroductions, or supplementations of existing mountain quail populations. ''Introduction'' has been used to define the release of a species in a new range, ''reintroduction'' refers to release of a species into historical range that is no longer inhabited by that species, and ''supplementation'' is release of the species into currently inhabited range (Vogel and Reese 2002). Given the history of translocations of mountain quail, it is currently difficult to clearly identify the historical native range of the species. The petitioners make no attempt to distinguish between the species' potential native or introduced ranges.

Two other factors to consider with regard to discreteness or isolation of a population are the behavioral and morphological aspects. Delehanty (1997) initiated a study to determine behavioral differences and similarities in male and female mountain quail. He also examined and was successful at developing a method to determine genetic detectability of sex using microsatellite fragments from undegraded DNA. He concluded that many behavioral displays are universal among both sexes of mountain quail, while some are particular only to males. These behaviors were observed by Delehanty (1997) in captive-reared birds and in wild populations at sites in the eastern Sierra Nevada of east central California, western Nevada, and in the Mojave Desert of southern California. He further confirmed the monomorphic plumage and size characteristics of mountain quail from known geographical places. The study served to demonstrate that behavioral and morphological aspects are not limiting factors in reproduction when translocation is considered. These conclusions were further confirmed by Pope and Crawford (2001) in controlled studies of wild populations of mountain quail when 75 birds were translocated from the Cascades of southwestern Oregon to Hells Canyon National Recreation Area in northeastern Oregon. The petitioners did not provide evidence to document whether mountain quail within the proposed DPS exhibit any unique behavioral or morphological traits. No information is presented in the petition, nor is any available in Service files, to indicate that any physical, genetic, behavioral, morphological, physiological, or ecological differences between mountain quail that occur in the proposed DPS and those found outside of it.

In summary, to make a DPS determination, we examined the physical, physiological, ecological, and behavioral factors and considered the complicating nature of past translocation efforts. Since there are no international government boundaries of significance, this condition for a finding of discreteness was not considered in reaching this determination. Neither the information presented in the petition nor that available in Service files presents substantial scientific or commercial information to demonstrate that the DPS, as proposed for mountain quail by the petitioners, is discrete from the remainder of the taxon. Accordingly, we are unable to define a listable entity of mountain quail within those areas of Washington, Oregon, Idaho, and Nevada as described in the petition. Therefore, we did not address the second element for determining a DPS, which is the potential significance of discrete populations of mountain quail to the remainder of the taxon. Finally, since no DPS of mountain quail can be defined at this time, we did not evaluate its status as endangered or threatened on the basis of either the Act's definitions of those terms or the factors in section 4(a) of the Act.

Petition Finding

We have reviewed the petition, obtainable literature cited in the petition, other pertinent literature, and information available in Service files, and we have consulted with State and Federal agency biologists. After our review, we find the petition does not present substantial information to indicate that the petitioned action is warranted. This finding is based on the following: (a) Insufficient information exists to enable us to determine whether the mountain quail in the proposed DPS are separated from other mountain quail throughout the range of the taxon; (b) complicating information about past translocations of mountain quail currently precludes clearly determining the native historical distribution of the species; and (c) evidence is insufficient to demonstrate that genetic, morphological, ecological, or behavioral differences exist among extant mountain quail populations.

References Cited

A complete list of all references cited herein is available upon request from the Snake River Basin Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this notice is Rich Howard, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office (see **ADDRESSES**).

Authority:

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 10, 2003.

Marshall P. Jones, Jr.,

Director, Fish and Wildlife Service.

[FR Doc. 03–1283 Filed 1–21–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 68, No. 14

Wednesday, January 22, 2003

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Renewal of the Advisory Committee on Voluntary Foreign Aid

AGENCY: United States Agency for International Development.

ACTION: Notice of renewal of advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Administrator has determined that renewal of the Advisory Committee on Voluntary Foreign Aid for a two-year period, beginning January 22, 2003, is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Noreen O'Meara, (202) 712–5979

Dated: January 16, 2003.

Noreen O'Meara,

Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 03–1358 Filed 1–21–03; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Motor Vehicles; Alternative Fuel Vehicle (AFV) Report

AGENCY: Departmental Administration, USDA.

ACTION: Notice of Availability—Fleet (AFV) Report.

SUMMARY: In accordance with the Energy Policy Act of 1992 (EPAct) (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and Executive Order (EO) 13149, ''Greening the Government Through Federal Fleet and Transportation Efficiency,'' the Department of Agriculture's annual alternative fuel reports are available on the following Department of Agriculture Web site; *http://www.usda.gov/energyandenvironment/alternative.html*

FOR FURTHER INFORMATION CONTACT: James Michael, Jr., (202) 720–8616.

Dated: January 8, 2003.

Lou Gallegos,

Assistant Secretary, Departmental Administration.

[FR Doc. 03–1342 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–98–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–03–02]

Notice of Request for Emergency Approval of a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments; extension of comment period.

SUMMARY: On November 21, 2002, the Agricultural Marketing Service (AMS) published a ''Notice of Request for Emergency Approval of a New Information Collection'' in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This notice announced that AMS was requesting emergency approval from the Office of Management and Budget (OMB) for the new information collection, ''Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Agricultural Marketing Act of 1946.'' AMS is extending the comment period to February 21, 2003, because several industry trade organizations requested additional time to file comments. A closing date is necessary for burden comments in order to receive OMB emergency approval.

DATES: Comments must be received by February 21, 2003.

ADDRESSES: Send written comments to: (1) Country of Origin Labeling Program, Agricultural Marketing Service, USDA, STOP 0249, Room 2092–S, 1400 Independence Avenue, SW., Washington, DC 20250–0249, or fax to (202) 720–3499, or send by e-mail to *cool@usda.gov;* (2) Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503, Attention: Desk Officer; and to (3) Clearance Officer, USDA–OCIO, Room 404–W, Jamie L. Whitten Building, STOP 7602, 1400 Independence Avenue, SW., Washington, DC 20250–7602.

All comments will become a matter of public record. Comments will be available for public inspection from the Agricultural Marketing Service (AMS) at the above address and over the Agency's Web site at: *http://www.ams.usda.gov/cool/.*

FOR FURTHER INFORMATION CONTACT: Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, by phone on: (202) 690–0262, or via e-mail at: *eric.forman@usda.gov;* or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by phone on: (202) 720–5705, or via e-mail at: *william.sessions@usda.gov.* Additional information may also be obtained over the Agency's Web site at: *http://www.ams.usda.gov/cool/.*

SUPPLEMENTARY INFORMATION: On November 21, 2002, the Agricultural Marketing Service published a notice and request for comments in the **Federal Register** (67 FR 70205), entitled, ''Notice of Request for Emergency Approval of a New Information Collection,'' in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This notice outlined the Agency's estimates of the burden on respondents relating to the notice published in the **Federal Register** (67 FR 63367) on October 11, 2002, entitled, ''Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the Agricultural Marketing Act of 1946'' (7 U.S.C. 1621 *et seq.*). Submissions concerning any information related to the implementation of these ''Voluntary Guidelines'' may still be submitted through April 9, 2003.

The comment period for the ''Notice of Request for Emergency Approval of a New Information Collection'' was originally scheduled to end on January 21, 2003. However, several industry trade organizations requested additional time to study the notice to develop more meaningful comments. Although a closing date for burden comments is needed to receive emergency OMB approval of the new collection, AMS has determined that there is sufficient

justification for extending the comment period 30 days until February 21, 2003.

Dated: January 16, 2003.

A.J. Yates,

Administrator.

[FR Doc. 03–1432 Filed 1–17–03; 2:27 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–02–19]

Beef Promotion and Research: Certification and Nomination for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations or associations and general farm organizations, as well as cattle or beef importer organizations, who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by close of business February 21, 2003.

ADDRESSES: Certification form as well as copies of the certification and nomination procedures may be requested from Kenneth R. Payne, Chief; Marketing Programs Branch, LS, AMS, USDA; STOP 0251–Room 2638-S; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. The form may also be found on the Internet at *http://www.ams.usda.gov/lsg/mpb/beef/ls25.pdf.*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720–1115.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), enacted December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 100 cattle producers and 8 importers appointed by USDA. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that USDA shall either certify or otherwise determine the eligibility of State cattle producer organizations or associations and general farm organizations, as well as any importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Persons who are individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of USDA that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order [7 CFR 1260.143(b)(2)]. Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process, including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557) and currently appear at 7 CFR § 1260.500 through § 1260.640. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the upcoming vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of 3 years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in early 2004:

State or unit	Number of Vacancies
Arizona	1
California	2
Colorado	1
Iowa	2
Kansas	2
Louisiana	1
Michigan	1
Minnesota	1
Mississippi	1
Missouri	1
Nebraska	2
Nevada	1
New Mexico	1
North Carolina	1
Oklahoma	1
South Dakota	2
Tennessee	1
Texas	4
Utah	1
Wisconsin	2
Wyoming	1
Importer Unit	2
Mid-Atlantic Unit	1
Northeast Unit	1
Southeast Unit	1

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations and general farm organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official ''Application for Certification of Organization or Association,'' which must be received by close of business February 21, 2003. Uncertified eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR § 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received within the 30-day period after publication of this Notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR § 1260.530 are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit,

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit,

(3) There must be a history of stability and permanency, and

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by USDA as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (*i.e.*, beef or cattle importers, etc.),

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle,

(3) The stability and permanency of the importer organization or association,

(4) The number of years in existence, and

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those that were previously certified in the States or units having vacant positions on the Board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to USDA for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: January 15, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–1341 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Public Hearing on New Entrant's 2003 Crop Cane Sugar Marketing Allotment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of public hearing.

SUMMARY: The Commodity Credit Corporation (CCC) will hold a public hearing to receive comments on providing an allocation to a new entrant processor and allotment to a new entrant State and possible impacts on existing cane processors and producers. CCC will also receive comments on the evidence CCC should require from a new entrant to demonstrate eligibility for a marketing allocation.

DATES: The public hearing will be held January 29, 2003, in the Jefferson Auditorium of the U.S. Department of Agriculture (USDA) South Building, 1400 Independence Ave, SW, Washington, DC. The hearing will start at 10:00 a.m. Eastern Standard Time (EST).

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW, STOP 0516, Washington, DC 20250B0516; telephone (202) 720B4146; FAX (202) 690B1480; e-mail: *barbara.fecso@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: USDA will hold a public hearing as requested by sugarcane producers and processors regarding the application of the Arizona Sugar Factory, L.L.C., for a cane sugar marketing allocation for the 2003 crop year. The Arizona Sugar Factory is requesting a 2003-crop year allocation of 10,000 short tons, raw value, and an increase to 50,000 short tons, raw value, for the 2005 crop. The new processor will be located in California, a State that currently has no allotment (*i.e.*, a new entrant State).

Section 359d(b)(1)(E) of the Agricultural Adjustment Act of 1938, as amended, authorizes CCC to provide a sugarcane processor, who begins processing after May 13, 2002, an allocation that provides a fair, efficient, and equitable distribution of the allocations from the allotment for the State in which the processor is located. To make an allocation to a processor in California, the Secretary will have to provide California with an allotment. CCC considers the adverse effects on existing cane processors and producers when determining whether a new entrant processor allocation and new entrant State allotment are warranted. Also, prior to the promulgation of the 2003-crop marketing allotments, the Arizona Sugar Factory must provide satisfactory evidence that it has a viable processing facility, an adequate sugarcane supply, and a market for the cane sugar product. If approved, the new California allotment will be subtracted, on a pro rata basis, from the allotments otherwise provided to each mainland State when the 2003 crop allotments are determined by USDA.

CCC will use this forum to collect comments on (1) any adverse effects that the provisions of an allocation to the Arizona Sugar Factory, L.L.C., and an allotment to California may have on existing cane processors and producers, and (2) the evidence CCC should require from a new entrant to demonstrate the ability to process, produce, and market raw cane sugar. Attendance is open to interested parties.

The hearing will be held on January 29, 2003, from 10:00 a.m. to 2:00 p.m. EST in the Jefferson Auditorium of USDA South Building, 1400 Independence Ave., Washington, DC.

Anyone wishing to make an oral statement may do so, time permitting. Comments will be limited to 5 minutes. A signup sheet for oral statements will be available at the entrance of the Jefferson Auditorium one hour before the hearing begins. Oral statements will be made in the order the request was received. Anyone wishing to make a written statement in lieu of an oral statement should send their statement to Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW, STOP 0516, Washington, DC 20250'0516; Telephone: (202) 720'4146; Fax: (202) 690'1480; e-mail: *barbara.fecso@usda.gov.* Statements must be received by close of business on January 29, 2003.

Persons with disabilities who require special accommodations to attend or participate in the meeting should contact Barbara Fecso.

Signed in Washington, DC on January 10, 2003.

James R. Little,

Executive Vice President, , Commodity Credit Corporation.

[FR Doc. 03–1340 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, January 27, 2003. The meeting will include routine

business and discussion and review of submitted project proposals.

DATES: The meeting will be held January 27, 2003, from 4 p.m. until 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 13, 2003.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 03–1275 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Status of Project Proposals, (5) Revised Tracking Form/ Possible Action, (6) Historic Library, (7) Project Status, (8) Update on Absent Members, (9) How to Solicit Projects, (10 General Discussion.

DATES: The meeting will be held on January 27, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisory's Office, 825 N. Humboldt Ave., Willows, CA 95988. 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 January 24, 2003 will have opportunity to address the committee at those sessions.

Dated: January 15, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–1296 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a town hall meeting of the Vermont Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on Friday, February 14, 2003, at the six Vermont Interactive Television sites located in (1) Colchester (76 King Street, Colchester, Vermont 05446), (2) Brattleboro (185 Main Street, P.O. Box 6308, Brattleboro, Vermont 05302), (3) Newport (North Country Union High School, Veterans Avenue, Newport, Vermont, 05061), (4) Randolph Center, Vermont Technical College, Randolph Center, Vermont 05061), (5) Rutland (Stafford Technical Center College 8 Stratton Road, Rutland, Vermont), and (6) St. Albans (North Building, Bellows Free Academy, P.O. Box 1578, St. Albans, Vermont 05478). The Advisory Committee will hold a town meeting with public agency officials, educators, and community leaders to discuss efforts to address racism and harassment of minorities in Vermont public schools and communities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Marc Pentino of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 13, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–1338 Filed 1–21–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with our regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Porcelain-on-Steel Cooking Ware from the People's Republic of China.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 2003.

	Period to be Reviewed
Antidumping Duty Proceedings	
Argentina: Honey A–357–812	5/11/01–11/30/02
Asociacion de Cooperativas Argentinas	
Centauro S.A.	
Cia. Europeo Americana SA	
Comexter Robinson S.A.	
Compa Inversora Platense S.A.	
Compania Apicola Argentina SA	
ConAgra Argentina S.A.	
Coope-Riel Ltda.	
Cooperativa DeAgua Potable y Otros	
Establecimiento Don Angel S.r.L.	
Food Way, S.A.	
Francisco Facundo Rodriguez	
Jay Bees	
Jose Luis Garcia	
HoneyMax S.A.	
Mielar S.A.	
Navicon S.A.	
Nexco S.A.	
Parodi Agropecuaria S.A.	
Radix S.r.L.	
Seylinco S.A.	
Times S.A.	
Transhoney S.A.	
Brazil: Silicomanganese, A–351–824	12/1/01–11/30/02
SIBRA-Electrosiderurgica Brazileira S.A.	
Compania Paulista De Ferro-Ligas-Ligas	
India: Certain Hot-Rolled Carbon Steel Flat Products, A–533–820	5/3/01–11/30/02
Essar Steel Ltd.	
Tata Iron ad Steel Company, Ltd.	
India: Stainless Steel Wire Rod, A–533–808	12/1/01–11/30/02
Isibars Steel	
Mukand, Limited	
Panchmahal Steel Limited	
The Viraj Group, Ltd.	
The People's Republic of China: Certain Cased Pencils,[1] A–570–827	12/1/01–11/30/02
Anhui Import/Export Group Corporation	
Beijing Light Industrial Products Import/Export Corporation	
China First Pencil Company, Ltd.	
China National Light Industrial Products Import & Export Corp. (all branches)	
Dalian Light Industrial Products Import/Export Corporation	
Guangdong Stationary & Sporting Goods Imports & Export Co., Ltd.	
Liaoning Light Industrial Products Import/Export Corporation	
Laizhou City Guangming Pencil-Making Co., Ltd.	
Orient International Holding Shanghai Foreign Trade Co., Ltd.	
Qingdao Light Industrial Products Import/Export Corporation	
Shandong Light Industrial Products Import/Export Corporation	
Shandong Rongxin Import & Export Company Ltd. (formerly called Kaiyuan Group Group Corporation)	
Sichuan Light Industrial Products Import/Export Corporation	
Tianjin Customs Wood Processing Co., Ltd.	
The People's Republic of China: Honey,[2] A–570–863	5/11/01–11/30/02
Anhui Native Produce Import & Export Corp.	
Henan Native Produce and Animal By-Products Import & Export Co.	
High Hope International Group Jiangsu Foodstuffs Import & Export Corp.	
Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp.	
Kunshan Foreign Trade Company	
Shanghai Eswell Enterprise Co., Ltd.	
Shanghai Xiuwei International Trading Co., Ltd.	
Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.	
Wuhan Bee Healthy Company, Ltd.	
Zhejiang Native Produce and Animal By-Products Import & Export Corp.	
The People's Republic of China: Porcelain-on-Steel Cooking Ware,[3] A–570–506	12/1/01–11/30/02
Clover Enamelware Enterprise, Ltd.	
Lucky Enamelware Factory, Ltd.	
Countervailing Duty Proceedings	
Argentina: Honey,[4] C–357–813	1/1/01–12/31/01
India: Certain Hot-Rolled Carbon Steel Flat Products, C–533–821	1/1/01–12/31/01
Essar Steel Ltd.	
South Africa: Certain Hot-Rolled Carbon Steel Flat Products, C–791–810	1/1/01–12/31/01
Iscor Ltd.	
Saldanha Steel Ltd.	

	Period to be Reviewed
Suspension Agreements	
None.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of certain cased pencils from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of honey from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of porcelain-on steel cooking ware from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] In the countervailing duty investigation of Honey from Argentina, the Department solicited information from the Government of Argentina (GOA) on an aggregate or industry-wide basis in accordance with section 777A(e)(2)(B) of the Act, rather than from individual producers and exporters, due to the large number of producers and exporters of Honey in Argentina. *See Final Affirmative Countervailing Duty Determination: Honey from Argentina,* 66 FR 50613–01 (October 4, 2001). In accordance with section 351.213(b) of the regulations, the GOA and the petitioners have requested an administrative review of this countervailing duty order. No individual exporters requested the review pursuant to section 351.213(b) of the regulations. Accordingly, the Department will be conducting the review of this order on an aggregate basis.

The GOA has requested that the period of review for this review be extended to include not only calendar year 2001 but also calendar year 2002. We are initiating this review for calendar year 2001, however, we are actively considering this request, and we will solicit comments from interested parties on this issue. After careful consideration of these comments, we will timely inform parties of our decision.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: January 15, 2003.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 03–1369 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5l3l (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by e-mail at *oetca@ita.doc.gov.* Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 02–00005.'' A summary of the application follows.

Summary of the Application

Applicant: Virginia Apple Growers Association, (''VAGA''), P.O. Box 1163, Richmond, Virginia 23218.

Contact: Richard Gilmore, President/CEO.

Telephone: (703) 684–1366.

Application No.: 02–00005.

Date Deemed Submitted: January 6, 2003.

Members (in addition to applicant): Bowman Fruit Sales, L.L.C., Timberville, VA; Crown Orchard Company, LLP, Batesville, VA; Flippin-Seaman, Inc., Tyro, VA; and Glaize, L.C., Fred L., Winchester, VA.

The proposed Export Trade Certificate of Review would extend antitrust protection to VAGA, and /or one or more of its Members to conduct the following export trade activities:

I. Export Trade

A. Products

1.Fresh Apples: any variety of apples intended for human consumption including but not limited to: Red Delicious, Golden Delicious, Rome, Stayman, York, Winesap, Granny Smith, Jonathan, Red, Gala, Empire, McIntosh, Fuji, Ginger Gold, Braebur, and Cortland.

2. Processed Apples: Includes a variety of apple products used for human consumption; mainly, apple juice, apple cider, applesauce, and apple butter.

B. Export Trade Facilitation Services (As They Relate to the Export of Products)

All export-related services, including, but not limited to, international market research, marketing, advertising, sales promotion, brokering, handling, transportation, common marking and identification, communication and processing of foreign orders to and for Members, financing, export licensing and other trade documentation, warehousing, shipping, legal assistance, foreign exchange and taking title to goods.

II. Export Trade Activities and Methods of Operation

With respect to export trade activities, VAGA and/or one or more of its members may on behalf of and with the advice and assistance of its Members:

1. Participate in negotiations and enter into agreements with foreign buyers (including governments and private persons) regarding:

a. the quantities, time periods, prices, and terms and conditions in connection with actual or potential bona fide export opportunities

b. non-tariff trade barriers in the Export Markets;

2. Establish export prices and allocate export sales among its Members, in connection with actual or potential bona fide export opportunities;

3. Enter into agreements with non-Members, whether or not exclusive, to provide Export Trade Services and Trade Facilitation Services;

4. Negotiate and enter into agreements with providers of transportation services for the export of the Products;

5. Advise and cooperate with the United States and foreign governments in:

a. establishing procedures regulating the export of the Products

b. fulfilling the phytosanitary and/or funding requirements imposed by foreign governments for export of the Products;

6. Establish and operate fumigation facilities and administer phytosanitary protocols to qualify the Products for Export Markets;

7. Communicate and process export orders;

8. Conduct direct sales;

9. Broker or take title to Products acquired from non-Member producers whenever necessary to fulfill specific sales obligations;

10. Operate foreign sales and distribution offices and companies to facilitate the sales and distribution of the Products in the Export Markets;

11. Refuse to deal with or provide quotations to other Export Intermediaries for sales of the Members' Products into the Export Markets;

12. Retain the option for VAGA to be the exporter of record with regard to sales conducted by and through VAGA;

13. Develop internal operational procedures and disseminate information to Members to assist the membership in meeting the criteria necessary for exporting;

14. Receive and (each Member may) supply information as to each Member's actual or intended total export shipments of certified products in any previous or future growing season or seasons. VAGA, through employees or agents of VAGA who are not also employees of a Member, may receive and each Member may supply to such employees or agents of VAGA, information as to such Member's actual or intended total export shipments in any previous growing season or seasons, provided that such information is not disclosed by VAGA to any other Member;

15. Exchange information with and among the Members as necessary to carry out the Export Trade Facilitation Services, Export Trade Activities and Methods of Operation;

16. Provide Export Market entry and development assistance to its Members, including:

a. designing and executing foreign marketing strategies for VAGA's Export Markets

b. designing, developing, and marketing generic corporate labels

c. other related administrative and promotional services;

17. Solicit non-Members to become Members;

18. Recover administrative expenses and costs through fees and assessments allocated to each Member on a pro-rata share basis or any other non-discriminatory method (any Member objecting to the method of allocating expenses and costs will be charged based on actual expenses incurred);

19. Apply for and utilize export assistance and incentive programs, as well as arrange financing through bank holding companies, governmental programs, and other arrangements; and

20. Bill and collect from foreign buyers and provide accounting, tax, legal, and consulting assistance and services.

III. Export Markets

The Export Markets include all parts of the world except the United States, (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Definition

''Export Intermediary'' means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

Dated: January 16, 2003.

Vanessa Bachman,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–1357 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the North Carolina Coastal Management Program and the Connecticut Coastal Management Program.

These Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the

Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings will be held as part of the site visit.

Notice is hereby given of the dates of the site visits for these evaluations, and the dates, local times, and locations of the public meetings during the site visit.

The North Carolina Coastal Management Program evaluation site visit will be held March 10–14, 2003. Three public meetings will be held during the week. The public meetings will be: On Monday, March 10, 2003, at 6 p.m., at the North Carolina Department of Environment and Natural Resources/Wilmington Regional Office, Conference Room, 127 Cardinal Drive Ext., Wilmington, North Carolina; on Tuesday, March 11, 2003, at 6 p.m., at the Carteret County Courthouse, District Courtroom, Courthouse Square, Beaufort, North Carolina; and Wednesday, March 12, 2003, at 6 p.m., at Manteo Town Hall, Board of Commissioners Meeting Room, 407 Budleigh Street, Manteo, North Carolina.

The Connecticut Coastal Management Program evaluation site visit will be held March 31–April 4, 2003. One public meeting will be held during the week. The public meeting will be held on Wednesday, April 2, 2003, at 7 p.m., at the Department of Environmental Protection Marine Headquarters, Training Room, Building #3, 333 Ferry Road, Old Lyme, Connecticut.

Copies of North Carolina's and Connecticut's most recent performance reports, as well as OCRM's notification and supplemental request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the last public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When each evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 118.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration

Dated: January 14, 2003.

Alan Neuschatz,

Chief Financial Officer/Chief, Administrative Officer for Ocean Services and Coastal Zone Management.

[FR Doc. 03–1292 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001214351–3009–04]

Dr. Nancy Foster Scholarship Program; Financial Assistance for Graduate Students

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is announcing funding availability for graduate students pursuing masters or doctoral level degrees in oceanography, marine biology, or maritime archaeology through the Dr. Nancy Foster Scholarship Program and is inviting applications for such scholarships. The intent of this program is to recognize outstanding scholarship and encourage independent graduate level research in the above mentioned fields.

DATES: Applications must be received by March 10, 2003 no later than 5 p.m. Eastern Standard Time. Scholarship awards will be announced in July 2003.

ADDRESSES: Applications should be sent to the Dr. Nancy Foster Scholarship Program, Attention: Office of the Assistant Administrator, 13th Floor, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910. Information on the scholarship program may be obtained from the Web site: *http://fosterscholars.noaa.gov*

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster Scholarship Program, Office of the Assistant Administrator, 13th Floor, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910 (301–713–3074).

SUPPLEMENTARY INFORMATION:

Authority: The Dr. Nancy Foster Scholarship Program is authorized at 16 U.S.C. 1445c–1 to recognize outstanding scholarship in oceanography, marine biology, or maritime archaeology, particularly by women and members of minority groups, and encourage independent graduate-level research through financial support of graduate studies in such fields.

Catalog of Federal Domestic Assistance: This program is listed under CFDA #11.460, titled Special Oceanic and Atmospheric Projects.

Program Description: The Dr. Nancy Foster Scholarship Program provides support for independent graduate-level studies in oceanography, marine biology, or maritime archaeology, particularly by women and members of minority groups. Gender and minority status is not considered when selecting award recipients. However, special outreach efforts are employed to solicit applications from women and minorities. Scholarship selections are based on financial need, academic excellence, recommendations, and research and career goals. The program is administered through NOAA's National Ocean Service and is funded annually with 1% of the amount appropriated each fiscal year to carry out the National Marine Sanctuaries Act.

Funding Availability: For the 2003–2004 academic year, Dr. Nancy Foster Scholarships may provide, subject to appropriations, support of up to $32,000 per student: a 12-month stipend of $20,000 in addition to a tuition allowance of up to $12,000. A maximum of $64,000 may be provided to masters students (up to two years of support) and up to $128,000 may be provided to doctoral students (up to four years of support). For the 2003–2004 academic year, NOAA expects to award up to five scholarships.

The annual stipend will be paid directly to the scholar. The stipend is intended to defray cost-of-living expenses, and not to support research costs. NOAA anticipates the student and their faculty advisor will secure research funds independent of the scholarship. Tuition and academic fees will be negotiated between the academic institution and the Dr. Nancy Foster Scholarship program manager at NOAA prior to the receipt of funds. This negotiation is intended to leverage scholarship funds and enhance opportunities for scholarship recipients. In those instances in which tuition and academic fees are not totally waived by the academic institution, the tuition allowance in an amount equal to the tuition and fees not waived (but not to exceed $12,000) will be paid directly to the scholar for remittance to the academic institution. If tuition and fees are reduced or waived by the academic institution, then that portion of the

tuition allowance not needed (*i.e.*, up to $12,000 in the case of a total waiver) will be retained by NOAA for future scholarships. No money will be paid directly to the student from the tuition allowance for purposes other than the payment of tuition and fees.

Specific instructions regarding the disbursement, management, and reporting requirements for all stipend and tuition allowance payments will be provided to the scholarship recipients upon selection for the award. The awarding of funds beyond the first year will be based on availability of funds, continued eligibility of the student, periodic certification by the academic institution that adequate academic progress is being made, and compliance with applicable reporting requirements. At its discretion, each academic institution may supplement a scholar's stipend from institutional funds in accordance with the supplementation policy of the institution.

Matching Requirements: There are no matching requirements for an award.

Type of Funding Instrument: Grant.

Eligibility Criteria: Only United States citizens currently pursuing or intending to pursue a masters or doctoral level degree in oceanography, marine biology, or maritime archaeology, including the curation, preservation, and display of maritime artifacts, are eligible for an award under this scholarship program. Prospective scholars do not need to be enrolled, but must be admitted to a graduate-level program in order to apply for this scholarship. Funds will not be released until the applicant provides certification (from the student's institution) supporting the student's acceptance to a graduate program. Studies must be conducted on a full-time basis. Recipients of scholarship awards may be employed at the time of the award if it is a requirement of their degree program or directly related to their research effort. Other forms of employment will not be allowed and scholars will be required to submit a letter certifying that they are in compliance with this requirement. Eligibility must be maintained for each succeeding year of support and annual reporting requirements, to be specified at a later date, will apply.

Award Period: This solicitation applies only to applicants whose studies begin in the fall 2003. Stipends will cover a 12 month period. Masters students may be supported for up to two years, and doctoral students for up to four years.

Indirect Costs: No indirect costs will be paid on this award.

Applications: This notice contains all necessary information and announces a closing date of March 10, 2003 for the submission of applications. Applications must be received March 10, 2003 no later than 5:00 Eastern Standard Time. Scholarship awards will be announced in July 2003.

Applications: Each application must include these following items. Failure to submit these items exactly as described in each section below will disqualify the application from consideration.

(I) General Information Sheet

(II) Statement of Intent

(III) Institute Certification or Letter of Acceptance (for those applicants who are currently enrolled in a graduate program for which support is requested, or who have received acceptance for fall 2003 enrollment in a graduate program for which support is requested)

(IV) Transcripts

(V) Three Letters of Recommendation

(VI) Declaration

I. General Information Sheet

Personal Data: Provide your full name, country of citizenship, current address, permanent address, and home and work telephone numbers. If you can be reached by fax or e-mail, include that information. Optional—for statistical collection purposes only: Indicate your gender, and race or ethnicity.

Degree Sought: State your proposed field of study (oceanography, marine biology or maritime archaeology) and degree type you are seeking (*e.g.*, M.S., M.A., Ph.D). Include the month and year you expect the degree to be awarded. State the name and location of your institution.

Education: List the academic degrees you have received, or expect to receive by the start of your proposed graduate studies for this program, including the date and institution.

Statement of Financial Need: State the estimated amount needed for tuition and fees. List all resources you have available to assist you in your graduate studies (*e.g.*, grants, student loans, scholarships, personal funds). You must be specific. List all resources by date and amount received. Indicate whether the funding source will continue throughout the 2003–2004 school year. Also indicate any work requirements associated with these resources.

II. Statement of Intent

The Statement of Intent is a self-description of your academic, research, and career goals, and how your proposed course of study or research will help you achieve these goals but more importantly, this is your opportunity to present yourself, your beliefs, and your aspirations. Include any background information you believe is pertinent, and provide insight into why you have chosen the goals you are pursuing. This statement should not be a research proposal or scientific abstract. This statement will be used to evaluate you as an individual, not necessarily as a scientist, and your motivation for applying for this scholarship. This statement should demonstrate your organizational, analytical, and written communication skills. The Statement of Intent should be typewritten , single-spaced on a blank sheet of paper, and should not exceed one page in length. Statements longer than one page will not be accepted and will result in the application being disqualified.

III. Institute Certification

A letter from the applicant's institution certifying that the student is enrolled or has been accepted to a graduate program must be submitted with the application. The letter should consist of the following information on school letterhead and be signed by a school official: Name and location of the academic institution, the school and department that you currently are attending or plan to attend, and the month and year your studies will begin if you are not currently enrolled. If you have a graduate advisor, list his/her name, address, telephone and fax numbers, and e-mail address, if available, in the Institute Certification portion of your application. Current transcripts will not be accepted in lieu of Institute Certification. Failure to include the Institute Certification specifically as indicated above will result in the application being disqualified.

IV. Transcripts

Provide transcripts for all previous university/college-level studies. Photocopied transcripts are acceptable. Transcripts must be included with all other application materials. Those mailed separately will not be accepted. Failure to include transcripts from all previous university/college-level studies will result in the application being disqualified.

V. Three Letters of Recommendation

Each application must include three, but only three, signed letters of recommendation from individuals who have knowledge of your academic record, research effort, work and/or life experience. Relevant unpaid work, such as internships and volunteer efforts, is applicable. If you have a sponsor or advisor in the program, one of these letters should be from that individual. Letters of recommendation sent apart

from the application will not be accepted. Applications without three, signed letters of recommendation or with more than three letters of recommendation will result in the application being disqualified.

VI. Declaration

Applicants must certify that all statements and information in their applications are true and correct by copying the following on a plain sheet of paper, signing it, and including it in their application:

I, the undersigned, declare, under penalty of perjury, that all statements and information in my application are true and correct.

Executed on [insert date].

Print or Type Name

Signature

Failure to include this statement, signed by the applicant, will result in the application being disqualified.

Funding Priorities: The priority of the program is to fund independent graduate-level studies in oceanography, marine biology, or maritime archaeology with scholarships distributed by disciplines, institutions and geography, and by the degree type and level being sought, with selections within distributions based on financial need, the potential for success in a graduate studies program, and the potential for achieving research and career goals.

Evaluation Criteria: The evaluation criteria and their weights are as follows: (a) Financial need (40%); (b) academic record (20%); (c) recommendations (18%); (d) organizational, analytical, and written communication skills based on statement of intent (15%); and (e) research and career goals and objectives as described in your statement of intent (7%).

Selection Procedures: An advisory panel of NOAA experts will review applications based on the evaluation criteria and provide a numerical score for each. The Program Manager will rank the applications based on these scores. Applications falling within the top 10 percent will be reviewed by a second panel of federal experts from which scholarship recipients will be chosen. The second panel will consider the following criteria: Availability of funds, distribution of awards across disciplines, institutions and geography, the degree type and level being sought, and the statement of intent. Therefore, scholarship awards will not necessarily be made to the applicants receiving the highest scores. The panel will arrive at a consensus decision for selection of scholarship recipients.

Announcement of Awards: The names, academic institutions, degrees being sought, research plans, and biographical information of the scholarship awardees will be posted on NOAA's National Ocean Service Web site and may be published in marketing materials developed to advertise the Dr. Nancy Foster Scholarship Program.

Unsuccessful Applicants: The applications of unsuccessful applicants will be destroyed following the selection of the recipients.

Other Requirements: The Department of Commerce Pre-Award Notification 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.

Classification: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). This application has been approved by the Office of Management and Budget (OMB) under control number 0648–0432. Public reporting burden for this collection of information is 4.5 hours for an application and 45 minutes per letter of recommendation. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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 PRA, unless that collection displays a currently valid OMB control number.

Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

This action has been determined to be not significant for purposes of Executive Order 12866.

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et. seq.* is not required and has not been prepared for this notice.

Dated: January 16, 2003.

Alan Neuschatz,

Associate Assistant Administrator for Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

[FR Doc. 03–1339 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120302E]

Marine Mammals; File No. 848–1695

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Marine Mammal Research Program, Southwest Fisheries Science Center, Honolulu Laboratory, 2570 Dole Street, Honolulu, HI 96822 (Principal Investigator, Dr. Bud Antonelis), has applied in due form for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research and enhancement.

DATES: Written or telefaxed comments must be received on or before February 21, 2003.

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;

Assistant Administrator for Protected Resources, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4020; fax (562)980–4027; and

Protected Species Program Coordinator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), 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 parts 222–226).

The applicant proposes to take Hawaiian monk seals over a five year period for purposes of 1) population assessment (monitoring, tagging and retagging, bleach marking, genetics analyses) to determine survivorship,

reproductive rates, pup production, incidence and causes of injury or mortality, and abundance; 2) disease and health assessment (health screening and treatment of ill animals, necropsies, analyses of parasites, dietary analyses) to gain information on pathogens and other factors that affect individual animals; and 3) recovery actions (relocations and translocations, adult male removals, and disentanglements) to enhance the survival of the population.

Annual takes are summarized as follows: Up to 1500 seals may be disturbed up to three times during ground monitoring on the Hawaiian Archipelago and Johnston Atoll. Up to 50 seals may be disturbed up to 10 times during aerial surveys in the Main Hawaiian Islands and adjacent islets, Kaula Rock, Necker Island, and Nihoa Island. Up to 416 seals (excluding lactating females and nursing pups) may be restrained, flipper and PIT tagged with flipper tissue plugs retained for genetics analyses, swab samples, and morphometrics taken; and up to 100 may be restrained, retagged, with flipper tissue plugs retained, swab samples and morphometrics taken. Up to 1500 seals may be bleach marked up to two times. Tagging and bleach marking may occur on the Hawaiian Archipelago and Johnston Atoll.

Up to 20 healthy seals (excluding lactating females and nursing pups) may be restrained, sedated, sampled (morphometrics, blood, blubber biopsy, and swabs), and instrumented with satellite and VHF transmitters (restraint and sampling may occur up to two times if animals subsequently show signs of illness) on the Main Hawaiian Islands. Up to 30 unhealthy seals (excluding lactating females and nursing pups) may be restrained, sedated, medically treated on site, and sampled as above (sedation, extent of sampling, and treatment will be at discretion of consulting veterinarian) up to two times in the Hawaiian Archipelago. Humane euthanasia may be performed on up to five severely debilitated or moribund seals at the discretion of the attending veterinarian.

Up to five nursing pups who have suckled less than half their nursing period and have lost contact with their mother may be restrained, swab samples taken, and relocated to a foster mother. Up to 25 weaned pups located in an area determined to be of high risk of mortality or areas of high human activity, may be restrained, swab samples taken, and relocated to a safer area. Up to 20 weaned pup and/or juvenile seals in an area of poor juvenile survival may be captured, restrained, sedated, sampled (morphometrics, blood, blubber biopsy, and swabs), temporarily held, medically treated, translocated to an island or atoll with higher juvenile survival, and released. All pup and juvenile relocations may occur on the Hawaiian Archipelago. Up to 10 adult male seals on the Hawaiian Archipelago that are known to have caused mortality to nursing pups, weaned pups, or immature seals may be captured, restrained, sedated, sampled (blood, biopsy, swabs), and relocated to the Main Hawaiian Islands or Johnston Atoll, placed in permanent captivity, or humanely euthanized. Up to 15 seals of any age or sex may be captured, disentangled, and released on the Hawaiian Archipelago or Johnston Atoll, in cooperation with the Marine Mammal Health and Stranding Response Program.

An unlimited number of seal carcasses may be necropsied and tissues analyzed in cooperation with the Marine Mammal Health and Stranding Response Program, an unlimited number of parts (molted fur/skin, placentae) salvaged, and an unlimited number of scat and spew samples may be collected at haul out sites along the Hawaiian Archipelago. An unlimited number of specimens (hard and soft parts including but not limited to blood serum, blubber biopsy, and placentae) may be exported to countries (including but not limited to Canada, the Netherlands, Scotland, and Australia) for scientific analyses related to health assessment of monk seals; samples not used in analyses may be re-imported. An unlimited number of specimens (hard and soft parts) from Mediterranean monk seals (*Monachus monachus*) may be imported to the U.S. and re-exported to the country of origin for opportunistic research related to the conservation of monk seals. Up to 200 monk seals may be incidentally disturbed up to two times during the research and enhancement activities. Up to 140 adult green sea turtles (*Chelonia mydas*) may be incidentally disturbed during research and enhancement activities. Up to five accidental mortalities of monk seals that are captured and sedated are requested over the five year period.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 15, 2003.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–1378 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

January 16, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that Thompson and Thompson, LLP (now operating as Progressive Services, Inc.) has violated the requirements for participation in the Special Access Program and has suspended Progressive Services, Inc. from participation in the Program for

the six-month period, September 1, 2002 through February 28, 2003.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of Progressive Services, Inc. during the period from September 1, 2002 through February 28, 2003, and to prohibit entry by or on behalf of Progressive Services, Inc. under the Special Access Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in Federal Register notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 16, 2003.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended Progressive Services, Inc. from participation in the Special Access Program for the period from September 1, 2002 through February 28, 2003. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of Progressive Services, Inc. during the period September 1, 2002 through February 28, 2003. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of Progressive Services, Inc. manufactured from fabric exported from the United States during the period September 1, 2002 through February 28, 2003.

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–1356 Filed 1–21–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 7, 2003.

PLACE: 1155 21 st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–1421 Filed 1–16–03; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 14, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–1422 Filed 1–16–03; 4:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 21, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–1423 Filed 1–16–03; 4:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Friday, February 28, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–1424 Filed 1–16–03; 4:33 pm]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its new application for the Civil Society Nonprofit Scholars Program. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by March 24, 2003.

ADDRESSES: Send comments to: Corporation for National and Community Service, Attn. Robin Dean, Program Manager, Office of Research and Policy Development, Room 9112, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Robin Dean, (202) 606–5000, ext. 436, or at *Rdean@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and,

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

I. Background

On November 26, 2002, a new scholars program was launched by the Corporation and the Woodrow Wilson International Center for Scholars that will enhance our understanding of the connection between civil society, nonprofits, volunteerism and public policy.

The Corporation and the Center are developing the application for the 2004–2005 competition. The application for the 2003–2004 competition was not opened for public comment because fewer than ten applications are expected to be submitted. Under this program, up to three scholars or experienced practitioners will spend nine months conducting research on topics such as the relationship between democratic institutions and nonprofits, the role of service in society, and civic engagement and public policy. Participants in the program will reside in the Washington area during their research term, from September 2004 through May 2005, and will have access to research facilities at the Center, the Corporation, and through the Washington area. The application deadline will be on or around January 15, 2004.

II. Current Action

As part of the OMB-approval process, the Corporation seeks public comment on the proposed 2004–2005 application instructions and forms for this fellowship opportunity. The proposed application is the same as that found in the 2003–2004 competition, except for a change in the deadline date. The 2003–2004 application can be downloaded from the following two Internet addresses: *www.nationalservice.org/scholars* or *www.wilsoncenter.org/scholars.*

Type of Review: New information collection.

Agency: Corporation for National and Community Service.

Title: Civil Society Nonprofit Scholars Program.

OMB Number: None.

Agency Number: None.

Affected Public: Citizens of the United States and worldwide applicants.

Total Respondents: 100.

Frequency: Once a year.

Average Time Per Response: 10 hours.

Estimated Total Burden Hours: 1,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 15, 2003.

David Reingold,

Director, Department of Research and Policy Development.

[FR Doc. 03–1323 Filed 1–21–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 5,264,722 entitled ''Nanochannel Glass Matrix Used in Making Mesoscopic Structures'', Navy Case No. 74,224 and U.S. Patent 6,185,961 entitled ''Nanopost Arrays and Process for Making Same'', Navy Case No. 78,923.

ADDRESSES: Requests for copies of the patents cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Ave, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Ave, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: January 15, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–1370 Filed 1–21–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 6,086,821 entitled ''Ultrasonic Force Differentiation Assay'', Navy Case No. 79,227, U.S. Patent No. 6,368,553 entitled ''Ultrasonic Force Differentiation Assay'', Navy Case No. 82,359 and U.S. Patent Application Serial No. 09/614,727 filed July 12, 2000, entitled ''Nanoporous Membrane Immunosensor'', Navy Case No. 80,068.

ADDRESSES: Requests for copies of the patents and/or inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Ave, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Ave, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: January 15, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–1371 Filed 1–21–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 21, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren.Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: January 15, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision of a currently approved collection.

Title: The Smaller Learning Communities Program (SLC) (1890–0001) (SC).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 700.

Burden Hours: 47000.

Abstract: The grant application package includes information for grant applicants, including priorities, selection criteria and requirements, along with relevant ED forms and non-regulatory guidance for the SLCP.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb/ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2211. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–1295 Filed 1–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Number DE–PS07–03ID14453]

Chemical Industry of the Future

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost shared research and development (R&D) of technologies which will reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts of the domestic chemical industry. The R&D will focus on technology development in the areas of catalysis and catalytic engineering, and separations technologies.

DATES: The issuance date of Solicitation Number DE–PS07–03ID14453 was January 14, 2003. The deadline for receipt of applications will be approximately on April 30, 2003.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov.* The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS ''User Guide for Contractors'' can be obtained on the IIPS Homepage and then clicking on the ''Help'' button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, *kleinsm@id.doe gov.*

SUPPLEMENTARY INFORMATION: Approximately $6 million in federal funds are expected to be available to fund the first 12 months of selected research projects. Subject to the availability of funds, approximately $30 million is planned to fund the remaining years of the projects. DOE anticipates making 6 to 10 cooperative agreement awards, each with a duration of three to five years or less. A minimum of two industrial chemical companies must be involved. Awardees are required to develop collaborative project teams, which can include industry, university, and national laboratory participants. The statutory authority for this program is the U.S. Department of Energy Organization Act (Public Law 95–91). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on January 13, 2003.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 03–1332 Filed 1–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Number DE–PS07–02ID14442]

Sensors, Controls, and Automation Crosscutting Technologies

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of Availability of Solicitation for Awards of Financial Assistance.

SUMMARY: The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research, development and demonstration of innovative sensor, control, automation and wireless technologies that will reduce energy consumption, minimize environmental impacts, and enhance economic competitiveness in U.S. industrial manufacturing. This solicitation addresses two separate topics:

1. Crosscutting sensors and controls, and

2. Industrial wireless telemetry

DATES: The issuance date of Solicitation Number DE–PS07–02ID14442 was January 15, 2003. The deadline for receipt of applications is March 31, 2003, at 3:00 p.m. MDT.

ADDRESSES: The solicitation will be available in its full text on the Internet by going to the DOE's Industry Interactive Procurement System (IIPS) at the following URL address: *http://e-center.doe.gov.* This will provide the medium for disseminating solicitations and amendments to solicitations, receiving financial assistance applications and evaluating applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS ''User Guide for Contractors'' can be obtained on the IIPS Homepage and then click on the ''Help'' button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Wade Hillebrant, Contract Specialist at *hillebtw@id.doe.gov*, or Dallas L. Hoffer, Contracting Officer at *hofferdl@id.doe.gov.*

SUPPLEMENTARY INFORMATION: Information about the Office of Industrial Technologies Sensors and Automation program, refer to URL: *http://www.oit.doe.gov/sens_cont/.* The IOF industry-specific vision documents and technology roadmaps are available at *http://www.oit.doe.gov/* under individual IOF program areas.

DOE anticipates making up to 4 cooperative agreement awards under this solicitation. Approximately $12 million in federal funds are expected to be available to fund selected research projects over a five-year period. A minimum 50% non-federal cost share is required for research and development projects over the life of the project. The cooperative agreements will be awarded in accordance with DOE Financial Assistance Regulations, Title 10 of the Code of Federal Regulations, Chapter II Subchapter H, Part 600 (10 CFR 600). The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on January 15, 2003.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 03–1334 Filed 1–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Grand Coulee-Bell 500-kV Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to construct the proposed Grand Coulee-Bell 500-kilovolt (kV) Transmission Line Project in Douglas, Grant, Lincoln, and Spokane Counties, Washington, based on the Final Environmental Impact Statement for this project (DOE/EIS–0344, December 2002). The proposed action consists of constructing a new 500-kV transmission line in Washington between the Bureau of Reclamation's Grand Coulee 500-kV switchyard near Grand Coulee and BPA's Bell Substation near Spokane, a distance of 84 miles.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA toll-free at 1–888–276–7790. The ROD and EIS Summary are also available on the Transmission Business Line Web site at *http://www.transmission.bpa.gov/projects.*

FOR FURTHER INFORMATION, CONTACT: Inez S. Graetzer, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *isgraetzer@bpa.gov.*

SUPPLEMENTARY INFORMATION: The proposed action involves removing an existing 115-kV transmission line and replacing it with a 500-kV line on existing right-of-way for most of its length. The line will be constructed using a single-circuit design, with the exception of two short distances of slightly less than one mile where double-circuit towers will be used because the right-of-way is constrained. As part of the proposed action, BPA has decided to expand the existing fenced yard at Bell Substation by about 11.7 acres; slightly expand the fenced area at Grand Coulee Switchyard to accommodate new line termination facilities and other equipment; install one group of series capacitors on an expanded site at BPA's Dworshak 500-kV Substation in Clearwater County, Idaho; and replace existing series capacitors within the current boundary of BPA's Garrison 500-kV Substation in Powell County, Montana. All mitigation measures have been updated, adopted, and included with the ROD. A Mitigation Action Plan will be prepared to be included in the construction specifications to ensure mitigation measures are implemented.

Issued in Portland, Oregon, on January 10, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–1333 Filed 1–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–27–000]

Panhandle Eastern Pipe Line Company; Notice of Application

December 23, 2002.

Take notice that on December 16, 2002, Panhandle Eastern Pipe Line Company (Panhandle), P. O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP03–27–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon in place certain obsolete compressor units and appurtenant facilities, located at thirteen (13) of Panhandle's existing compressor stations in Kansas, Missouri, Illinois and Indiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''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 for TTY, contact (202) 502–8659.

Panhandle states that the fifty-nine compressor units proposed to be abandoned, with a net book value as of December 31, 2002 of $93,148 and totaling 68,200 HP, are obsolete and uneconomical to operate and are no longer needed due to changes in the operating configuration of its system since the units were initially installed. Panhandle states that 10 are field area horizontal and vertical compressor units and 49 are market area horizontal and vertical compressor units. Panhandle states that all above-ground gas and service piping to the units will be

disconnected and sealed off and, as the opportunities arise, Panhandle states that it may either reuse the parts of the abandoned units for maintenance and repair of similar remaining units, or sell the equipment as salvage. Panhandle further states that the abandonment of these facilities will not result in the abandonment of service to any of Panhandle's existing shippers, nor will the proposed abandonment adversely affect Panhandle's ability to meet current service requirements.

Any questions concerning this application may be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, Panhandle Eastern Pipe Line Company, P. O. Box 4967, Houston, Texas 77210–4967, call (713) 989–7000 or fax (713) 989–1180.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 24, 2003.

Editorial Note: This document was received in the Office of the Federal Register on December 24, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 03–1446 Filed 1–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2584–000, et al.]

Northeast Utilities Service Company, et al.; Electric Rate and Corporate Filings

January 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Northeast Utilities Service Company

[Docket No. ER01–2584–000]

Take notice that on November 25, 2002, Northeast Utilities Service Company (NUSCO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Withdrawal of its application for the Connecticut-Long Island cable (CLC) project that was filed with the Commission on July 13, 2001 in the above-referenced proceeding.

Comment Date: February 5, 2003.

2. West Texas Utilities Company

[Docket No. ER03–281–000]

Take notice that on December 16, 2002, West Texas Utilities Company (WTU) tendered for filing with the Federal Energy Regulatory Commission (FERC or Commission):

1. A Notice of Cancellation of First Revised Service Agreement No. 7 under WTU's FERC Electric Tariff, Second Revised Volume No. 9;

2. A Notice of Cancellation of Service Agreement No. 19 under WTU's FERC Electric Tariff, Original Volume No. 1;

3. A Revised Sheet No. 1 to First Revised Service Agreement No. 7 under WRU's FERC Electric Tariff, Second Revised Volume No. 9 with the designation information required by Commission Order No. 614, FERC Stats. & Regs. § 31,096 (2000), indicating that the service agreement is to be canceled effective December 31, 2002; and

4. A Revised Sheet No. 1 to Service Agreement No. 19 under WTU's FERC Electric Tariff, Original Volume No. 1, with the designation information required by Commission Order No. 614, indicating that the service agreement is to be canceled effective December 31, 2002.

Comment Date: January 27, 2003.

3. New York State Electric & Gas Corporation

[Docket Nos. ER03–315–000 and ER03–315–001]

Take notice that on December 23, 2002, as corrected on January 9, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 227 filed with FERC corresponding to an Agreement with the Municipal Board of the Village of Bath (the Village).

This rate filing is made pursuant to Section 2(a) through ∧ of Article IV of the May 1, 2001 Facilities Agreement between NYSEG and the Village, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the FERC (FERC Form 1) for the twelve month period ending December 31, 2001. The revised facilities charge is levied on the cost of the tap facility constructed and owned by NYSEG to connect the Village's 34. kV transmission line to NYSEG's kV transmission system. NYSEG requests an effective date of January 1, 2003.

NYSEG states that copies of the filing were served upon the Municipal Board of the Village of Bath and Public Service Commission of the State of New York.

Comment Date: January 30, 2003.

4. Las Vegas Cogeneration II, L.L.C.

[Docket No. ER03–222–001]

Take notice that on January 10, 2003, Las Vegas Cogeneration II, L.L.C., filed substitute pages for the proposed market-based rate wholesale power sales rate schedule (Rate Schedule) that LV Cogen filed with the Federal Energy Regulatory Commission (Commission) in the referenced docket on November 25, 2002.

Comment Date: January 31, 2003.

5. TXU Pedricktown Cogeneration Company LP

[Docket No. ER03–256–001]

Take notice that on January 10, 2003, TXU Pedricktown Cogeneration Company LP (TXU Pedricktown), tendered for filing as an amendment to its Notice of Succession, filed in Docket No. ER03–256–000 on December 9, 2002, a revised market-based rate tariff (Tariff) reflecting its name change from Pedricktown Cogeneration Limited Partnership, and a revision to paragraph seven (7) ''Affiliate Sales Prohibited'' of its Tariff to comply with the Commission's Order in Aquila, Inc., 101 FERC § 61,331 (2002). TXU Pedricktown requests waiver of the 60-day prior notice requirement to allow its revised Tariff to become effective as of December 3, 2002.

Comment Date: January 31, 2003.

6. Ameren Services Company

[Docket No. ER03–336–001]

Take notice that on January 14, 2003, Ameren Services Company (ASC) tendered for filing a Firm Point-to-Point Transmission Service Agreement between ASC and Ameren Energy. ASC asserts that the purpose of the Agreement is to replace the unexecuted Agreement in Docket No. ER03–336–000 with the executed Agreement.

Comment Date: February 4, 2003.

7. PacifiCorp

[Docket No.ER03–399–000]

Take notice that on January 10, 2003, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a Mutual Netting/Settlement Agreement with Clatskanie Public Utility District.

PacifiCorp states that copies of this filing were supplied to the Clatskanie Public Utility District and the Public Utility Commission of Oregon.

Comment Date: January 31, 2003.

8. American Electric Power Service Corporation

[Docket No. ER03–400–000]

Take notice that on January 10, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement and Memorandum of Understanding between Ohio Power Company and DPC Northeast Power, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001.

AEP requests an effective date of March 11, 2003. AEP also states that a copy of the filing was served upon DPC Northeast Power, LLC and the Public Utilities Commission of Ohio.

Comment Date: January 31, 2003.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–401–000]

Take notice that on January 10, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to Attachment M of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, which reflect proposed language changes for clarification purposes. The Midwest ISO has requested an effective date of February 1, 2003.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: January 31, 2003.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–402–000]

Take notice that on January 10, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions of Schedule 7, Schedule 8 and Schedule 9 of the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. Applicant requests an effective date upon the closing of the Divestiture Transaction between DTE Energy and ITC Holdings.

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. *Comment Date:* January 31, 2003.

11. Indiana Michigan Power Company

[Docket No. ER03–403–000]

Take notice that on January 13, 2003, Indiana Michigan Power Company (IMPCo) submitted for filing an unexecuted Interconnection and Operation Agreement between IMPCo and South Shore Power, L.L.C. (SSPCo). The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective July 31, 2001.

IMPCo requests an effective date of March 14, 2003. IMPCo also states that copies of this filing have been served upon SSPCo and the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: January 31, 2003.

12. PJM Interconnection, L.L.C.

[Docket No. ER03–404–000]

Take notice that on January 10, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing two new attachments to the PJM Open Access Transmission Tariff (PJM Tariff) setting forth the standard terms and conditions for independent transmission companies to operate in the PJM region.

PJM states that copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region. PJM proposes an effective date of March 12, 2003 for the new PJM Tariff attachments.

Comment Date: January 31, 2003.

13. PJM Interconnection, L.L.C.

[Docket No. ER03–405–000]

Take notice that on January 10, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed changes to the PJM Open Access Transmission Tariff. PJM states that the proposed changes create procedures and standardized terms and conditions for interconnection with the PJM transmission system of new and expanded merchant transmission facilities, as well as for the construction of transmission upgrades and other facilities necessary to accomplish such interconnections; add and modify related forms of service agreements; and reorganize and make conforming

changes to various provisions of the existing Part IV of the PJM Tariff.

PJM further states that copies of this filing have been served on all parties to Docket No. RT01–2–000, as well as on all PJM Members and the state electric regulatory commissions in the PJM region. PJM requests an effective date of January 13, 2003, for the proposed tariff changes.

Comment Date: January 31, 2003.

14. California Independent System Operator Corporation

[Docket No. ER03–407–000]

Take notice that on January 13, 2003, the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 48 to the ISO Tariff (Amendment No. 48). Amendment No. 48 would modify the ISO Tariff to provide Congestion revenues, Wheeling revenues, and FTR auction revenues to entities other than Participating Transmission Owners, if any such entities fund transmission facility upgrades on the ISO Controlled Grid. The ISO has requested waiver of the Commission's 60-day notice period so that Amendment No. 48 will become effective on January 13, 2003.

The ISO states that this filing has been served on the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, on all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and the Participating TOs. In addition, the ISO is posting this transmittal letter and all attachments on the ISO Home Page.

Comment Date: February 3, 2003.

15. Puget Sound Energy, Inc.

[Docket No. ER03–408–000]

Take notice that on January 13, 2003, Puget Sound Energy, Inc. tendered for filing an Interconnection and Parallel Operating Agreement with Puget Sound Hydro, LLC (Puget Sound Hydro). A copy of the filing was served upon Puget Sound Hydro and The Washington Utilities and Transportation Commissions.

Comment Date: February 3, 2003.

16. Pacific Gas and Electric Company

[Docket No. ER03–409–000]

Take notice that on January 13, 2003, Pacific Gas and Electric Company (PG&E), tendered for filing proposed changes in its Transmission Owner Tariff (TO Tariff) and Cost Support for PG&E specific rates associated with the TO Tariff. PG&E requests that its filing be made effective upon the end of the 60-day prior notice period specified in Section 18 CFR 35.3.

This filing proposes changes to PG&E's transmission access charges, which are calculated in accordance with the rate methodology set forth in PG&E's TO Tariff. PG&E provides cost support for PG&E's proposed transmission access charges.

PG&E states that copies of this filing have been served upon the CPUC and the California Independent System Operator Corporation.

Comment Date: February 3, 2003.

17. ITC Holdings Merger Sub, Inc.; International Transmission Company

[Docket No. ES03–19–000]

Take notice that on January 9, 2003, ITC Holdings Merger Sub, Inc. and International Transmission Company (ITC Holdings) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue and sell no more than $200 million of long-term debt securities.

ITC Holdings also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: February 5, 2003.

18. John R. Fielder

[Docket No. ID–3259–001]

Take notice that on January 10, 2003, John R. Fielder tendered for filing an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice president, Southern California Edison Company.

Director, California Power Exchange.

Comment Date: January 31, 2003.

19. James P. Avery

[Docket No. ID–3847–000]

Take notice that on January 10, 2003, James P. Avery submitted to Federal Energy Regulatory Commission (Commission) an Application for Authorization to Hold Interlocking Positions pursuant to Section 305(b) of the Federal Power Act and Part 45 of the Commission's Regulations.

Comment Date: January 31, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1387 Filed 1–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–45–000, *et al.*]

Public Service Company of New Mexico, *et al.;* Electric Rate and Corporate Filings

January 14, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Public Service Company of New Mexico

[Docket No. EC03–45–000]

Take notice that on January 10, 2003, Public Service Company of New Mexico (PNM) submitted for filing an application under section 203 of the Federal Power Act for approval of the reacquisition by PNM of legal title to a portion of the Eastern Interconnection Project, a 216 mile, 345 kV transmission line currently leased by PNM pursuant to a sale and lease-back transaction through a transaction involving PNM Resources, Inc., and the termination of a non-jurisdictional lease associated with that portion of the facilities.

Comment Date: January 31, 2003.

2. The United Illuminating Company

[Docket No. ER03–31–001]

Take notice that on January 9, 2003, The United Illuminating Company (UI) tendered for fling with the Federal Energy Regulatory Commission (Commission) a revised Interconnection Agreement between UI and Cross-Sound Cable Company, L.L.C., executed pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended. This filing is in compliance with the Commission's December 9, 2002 Order Accepting and Suspending Interconnection Agreement, with Modification, and Establishing Hearing and Settlement Judge Procedures (101 FERC § 61,281).

Comment Date: January 30, 2003.

3. New York Independent System Operator, Inc.

[Docket No. ER03–297–001]

Take notice that on January 8, 2003, the New York Independent System Operator, Inc. (NYISO), filed corrections to its December 19, 2002, filing in which the NYISO proposed to amend its Transmission Congestion Contracts credit policy (the December 19 Filing). The filing corrected an error in the transmittal letter of the December 19 Filing.

The NYISO states that it has served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Services Tariff or Open Access Transmission Tariff, the New York State Public Services Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: January 29, 2003.

4. New York State Electric and Gas Corporation

[Docket No. ER03–314–000]

Take notice that on December 23, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) a supplement to Rate Schedule FERC No. 72 Facilities Agreement between NYSEG and the Municipal Board of the Village of Bath (the Village).

Comment Date: January 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''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 for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–1386 Filed 1–21dash;03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7441–8]

EPA Science Advisory Board, Notification of Public Advisory Committee Meeting; Contaminated Sediment Science Plan Review Panel

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Contaminated Sediment Science Plan Review Panel (CSSP Review Panel) of the U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) will meet via teleconference on February 14, 2003, from 3 p.m. to 5 p.m. eastern time. This teleconference meeting will be hosted out of Conference Room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The meeting is open to the public, but, due to limited space, seating will be on a first-come basis. The public may also attend via telephone, however, lines may be limited. Information on how to participate is given below.

Background—The background for this review and the charge to the CSSP Review Panel were published in the **Federal Register** (67 FR 49336, July 30, 2000). The notice also included a draft charge to the CSSP Review Panel, a call for nominations for members of the CSSP Review Panel in certain technical expertise areas needed to address the charge and described the process to be used in forming the CSSP Review Panel. Subsequently, notice was published December 19, 2002 (67 FR 77783) of four meetings that have since been convened: a teleconference on October 17, 2002, a meeting in Washington, DC on October 30 and 31, 2002, and two subsequent teleconferences on November 22, 2002 and January 6, 2003. Details on the activities of the CSSP Review Panel can be found on our Web site at: *http://www.epa.gov/sab/panels/cssprpanel.html.*

Purpose of this Meeting—The purpose of this public teleconference meeting is for the CSSP Review Panel to: (a) Review and revise the panel's draft report as necessary; and (b) approve the report as revised for delivery to the SAB Executive Committee.

For Further Information—To inquire about public participation in the meeting identified above please contact Mr. Lawrence Martin, Designated Federal Officer, CSSP Review Panel, USEPA Science Advisory Board (1400A), Suite 6450DD, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–6497; fax at (202) 501–0323; or via e-mail at *martin.lawrence@epa.gov.* Members of the public desiring additional information about the meeting locations or the call-in number for the teleconference, must contact Mr. Martin at the addresses and numbers identified above.

Submitting Public Comments—The SAB will have a brief period (no more than 10 minutes) available during the Teleconference meeting for applicable public comment. For teleconferences, the oral public comment period will be divided among the speakers who register. Registration is on a first come basis. Speakers who have been granted time on the agenda may not yield their time to other speakers. Those wishing to speak but who are unable to register in time may provide their comments in writing. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Mr. Martin at the address above no later than noon eastern time on February 10, 2003.

Availability of Review Material—There is one primary document that is the subject of the review. This review document is available electronically at the following site *http://www.epa.gov/sab/panels/cssprpanel.html.* For

questions and information pertaining to the review document, please contact Dr. Lee Hofmann, USEPA, Office of Solid Waste and Emergency Response (OSWER), Mail Code 5103T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 at telephone number 202–566–1928, or by e-mail at: *hofmann.lee@epa.gov.* The Panel's draft report, which will be the topic for the February 14th teleconference, will be available on February 10, 2003 at the following site: *http://www.epa.gov/sab/panels/cssprpanel.html.*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total (unless otherwise indicated above). Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Martin at least five business days prior to the meeting so that appropriate arrangements can be made.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in the Science Advisory Board FY2001 Annual Staff Report which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: January 13, 2003.

A. Robert Flaak,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–1359 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0300; FRL–7282–7]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted SafeScience, Inc., now known as GlycoGenesys, Inc. to conditionally register the pesticide product BAITS MOTEL Stay Awhile - Rest Forever™ containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0300. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document

electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Beauveria bassiana* strain 447, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Beauveria bassiana* strain 447 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of September 19, 2001 (66 FR 48256) (FRL–6791–1), which announced that SafeScience, Inc., now known as GlycoGenesys, 31 St. James Ave., 8th Floor, Boston, MA 02116, had submitted an application to conditionally register the pesticide product, Healthy Indoors Brand, Ant and Cockroach Bait Station, now known as BAITS MOTEL Stay Awhile - Rest Forever™, for use as an indoor, non-food use, microbiological bait for control of fire ants and cockroach (EPA File Symbol 70464–U), containing *Beauveria bassiana* strain 447 at 10%, an active ingredient not included in any previously registered product.

One comment was received in response to the original publication of the notice of receipt of this application. The comment referred to the isolation of the microorganism in Brazil and the recognition of the Brazilian contribution. The applicant, GlycoGenesys, confirmed the original isolation of the fungus in Brazil. Following approved importation and release of the fungus in Gainesville, Florida, the applicant recovered it from release sites in Florida. A biologically pure culture of a novel isolate, specific for imported fire ants, was deposited in the American Type Culture Collection and is recognized as ATCC 20872 (December 29, 1987). *Beauveria bassiana* strain 447 is the subject of invention in U.S. registered patents, which names the commenter as the co-inventor.

On the basis of data submitted to the Agency, the pesticide was considered acute toxicology Category III for primary eye irritation and IV for acute oral and pulmonary effects. Certain data requirements were waived by the Agency based on the low exposure levels associated with this method of application. Efficacy data support the use of the pesticide as a bait against ants and fire ants. While the active ingredient is efficacious against cockroaches as a spray, its efficacy in the form of a bait needs further study. Because the pesticide is proposed for control of fire ants, it qualifies for an automatic presumptive finding, and its use is presumed to be in the public interest. The conditional registration allows use against ants and fire ants until the applicant provides analysis of five batches to demonstrate adequate production Quality Control and Assurance procedures. Further data are required should the applicant wish to register the pesticide for control of cockroach and other extensive agricultural use patterns. The label prohibits use in/on or near food storage, handling areas, or utensils.

The application was conditionally approved on September 27, 2002 for the end-use product BAITS MOTEL Stay Awhile - Rest Forever™ (EPA Registration Number 70464–4) for indoor bait use on the basis of data submitted to the Agency. The pesticide contains 10% w/w (1×10^{10} cfu/gram) of the active ingredient *Beauveria bassiana* strain 447, a new active ingredient. This strain of *Beauveria bassiana* can be distinguished from the other strains of *Beauveria bassiana* by isozyme analysis. Like the other strains, it is also an entomopathogenic fungus, which germinates on the cuticles of insects, which it kills by secreting enzymes in their soft tissue .

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 23, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–970 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7441–2]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Vienna PCE Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Vienna PCE Site, Vienna, Wood County, West Virginia. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on December , 2002, and is subject to review by the public pursuant to this document.

The Environmental Protection Agency is proposing to enter into a settlement pursuant to sections 122(g)(7) and (h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(7) and (h). The proposed settlement resolves EPA's claims for past and future response costs under section 107 of CERCLA, 42 U.S.C. 9607 against Mr. Woodrow Moss for response

costs incurred at the Vienna PCE Site, Vienna, Wood County, West Virginia. The proposed settlement requires Mr. Woodrow Moss to pay $1000.00 to the EPA Hazardous Substance Fund.

Mr. Woodrow Moss, as the Settling Party, has executed binding certifications of its consent to participate in this settlement. Mr. Woodrow Moss has agreed to pay $1000.00 subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this document.

For 30 days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before February 21, 2003.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and should reference: Vienna PCE Site, Vienna, Wood County, West Virginia, U.S. EPA Docket No. CERC–2002–0245DC. The proposed settlement agreement is available for public inspection at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed settlement agreement can be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, telephone number (215) 814–2476.

FOR FURTHER INFORMATION CONTACT: Gail P. Wilson, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Office of Regional Counsel (3RC41), 1650 Arch Street, Philadelphia, Pennsylvania 19103, telephone number (215) 814–2493.

Dated: January 14, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–1360 Filed 1–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Department Census.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0287.

Abstract: Many data products and reports exist that contain fragmented or estimated information about fire department demographics, and capabilities, but there is no single reference source today that aggregates this data to provide a complete and accurate profile of fire departments in the United States. The U.S. Fire Administration (USFA) receives many requests for information related to fire departments, including total number of departments, number of stations per department, population protected, apparatus and equipment status. The USFA is working to identify all fire departments in the United States to develop and populate a national database that will include information related to demographics, capabilities and activities. The database will be used by USFA to guide programmatic decisions, provide the Fire Service and the public with information about fire departments, to produce mailing lists for USFA publications and other materials. In the first year of this effort, information was collected from 16,000 fire departments leaving an estimated 17,000 fire departments still to respond.

Affected Public: Not-For-Profit Institutions, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 17,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 7,083.

Frequency of Response: One-Time.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Facsimile number (202) 646–3347, or e-mail address: *InformationCollections@fema.gov.*

Dated: January 10, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–1328 Filed 1–21–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented

on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

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

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to Approve Under OMB Delegated Authority The Extension For Three Years, With Revision, of the Following Report:

Report title: Interagency Notice of Change in Bank Control, Interagency Notice of Change in Director or Senior Officer, and Interagency Biographical and Financial Report

Agency form number: FR 2081a, FR 2081b, and FR 2018c

OMB control number: 7100–0134

Frequency: On occasion

Reporters: Financial institutions and certain of their officers and shareholders

Annual reporting hours: Interagency Notice of Change in Bank Control–3,900 hours; Interagency Notice of Change in Director or Senior Officer–130 hours; Interagency Biographical and Financial Report–4,420 hours

Estimated average hours per response: Interagency Notice of Change in Bank Control–30 hours; Interagency Notice of Change in Director or Senior Officer–2 hours; Interagency Biographical and Financial Report–4 hours

Number of respondents: Interagency Notice of Change in Bank Control–130; Interagency Notice of Change in Director or Senior Officer–65; Interagency Biographical and Financial Report–1,105

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1817(j) and 12 U.S.C. 1831(q)) and is not given confidential treatment.

Abstract: The information collected assists the Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) in fulfilling their statutory responsibilities. These regulatory agencies use the information to evaluate a depository institution's controlling ownership interests and its senior officers and directors. The information collected in the Interagency Notice of Change in Bank Control (FR 2081a) is supplied by persons proposing to make significant investments in bank holding companies or depository institutions. The information collected in the Interagency Notice of Change in Director or Senior Executive Officer (FR 2081b) is required under Section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The notice is completed, under certain circumstances, by a bank holding company or depository institution making changes in its board of directors or senior executive officers. The Interagency Biographical and Financial Report (FR 2081c) is not a stand–alone report; it is used as a companion report with other reports to gather required information about the individuals involved in certain types of applications and notifications.

Board of Governors of the Federal Reserve System, January 15, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–1310 Filed 1–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 2003.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Alan Wilber Rolley, Dallas, Texas, and Blake Alan Rolley, Flagstaff, Arizona, acting in concert; to acquire control of Arizona Bancshares, Inc.,

Flagstaff, Arizona, and thereby indirectly acquire additional voting shares of First State Bank, Flagstaff, Arizona.

Board of Governors of the Federal Reserve System, January 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–1312 Filed 1–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Coastal Commerce Bancshares, Inc., Houma, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Coastal Commerce Bank, Houma, Louisiana.

2. Eagle National, Inc., Stockbridge, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Eagle National Bank, Stockbridge, Georgia.

3. SouthTrust Corporation, Birmingham, Alabama; to merge with Founders Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire 100 percent of the voting shares of Founders National Bank, Dallas, Texas.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Ravalli County Bankshares, Inc., Hamilton, Montana; to acquire 32.86 percent of the voting shares of West One Bank, Kalispell, Montana, a *de novo* bank.

2. Bitterroot Holding Company, Lolo, Montana; to acquire 32.86 percent of the voting shares of West One Bank, Kalispell, Montana, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1.Campbell State Company, Campbell, Nebraska; to acquire 100 percent of the voting shares of Blue Hill Agency, Inc., Blue Hill, Nebraska, and thereby indirectly acquire voting shares of Commercial Bank, Blue Bill, Nebraska.

Board of Governors of the Federal Reserve System, January 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–1311 Filed 1–21–03; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

TIME AND DATE: 12 p.m., Monday, January 27, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 16, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–1426 Filed 1–16–03; 4:34 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Governmentwide Per Diem Advisory Board

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Governmentwide Per Diem Advisory Board (''the Board'') will hold an open meeting from 9 a.m. to 11:30 a.m. on Friday, January 24, 2003. The meeting will be held at The American Institute of Architects Board Room, 1735 New York Ave., NW., Washington, DC 20006. This meeting is open to the public. Members of the public who wish to file a statement with the Board may do so in writing c/o Rob Miller, Designated Federal Officer (MTT), General Services Administration, 1800 F St., NW., Room 1221B, Washington, DC 20405, or via e-mail at *robl.miller@gsa.gov*.

Purpose: To review the current process and methodology that is used by GSA's Office of Governmentwide Policy to determine the *per diem* rates for destinations within the Continental United States (CONUS), and to provide advice on best practices for a Federal lodging program. The Board will present its recommendations for improving the *per diem* process, and best practices for a Governmentwide lodging program.

For building access: (1) ADA accessible facility; (2) public seating is limited.

FOR FURTHER INFORMATION CONTACT: Rob Miller (202) 501–4621, Designated Federal Officer, or Joddy Garner (202) 501–4857, Per Diem Program Manager, General Services Administration. Also, inquiries may be sent to *robl.miller@gsa.gov*.

Dated: December 31, 2002.

Becky Rhodes,

Deputy Associate Administrator, Office of Transportation and Personal Property.

[FR Doc. 03–1281 Filed 1–21–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–37]

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: Travelers' Health Survey (OMB No. 0920–0519)—Reinstatement—National Center for Infectious Diseases. Approximately 58 million Americans travel abroad each year, and over a third travel to developing countries where the risk is greater for contracting infectious diseases. Many of these diseases are preventable through vaccines, drugs, and other preventive measures. According to surveillance data from the CDC, over 99% of malaria, 72% of typhoid, and 7% of hepatitis A cases in the U.S. are acquired abroad. Information on preventing illness during travel is available free or at little cost through public health departments, a CDC toll-free fax system, and the Internet. However, many travelers may be unaware of the health risks they face when traveling because they either lack access to pretravel health services or do not understand the measures necessary to avoid health risks. Evidence shows first- and second-generation U.S. immigrants that travel to their countries of origin to visit friends and relatives may be at a greater risk for contracting infectious diseases.

The objectives of this project are to determine (i) whether travelers seek pretravel health information, (ii) where they access this information, (iii) travelers' baseline knowledge of prevention measures for diseases commonly associated with travel, and (iv) whether specific groups of travelers (*i.e.* first- and second-generation immigrants) lack information on or access to pretravel health recommendations and services. To accomplish these objectives, in partnership with Delta Airlines, CDC proposes to conduct voluntary, self-administered, anonymous, in-flight surveys of U.S. citizens and residents traveling abroad to areas where malaria, typhoid fever, and hepatitis A are endemic.

This preliminary project will focus on first- and second-generation U.S. immigrants from India visiting friends and relatives in India, where all three diseases are endemic. A study period of 2 to 3 months is estimated. Data from this project will fulfill Healthy People 2010 objectives for travelers. In addition, it will enable CDC to develop appropriate educational interventions for high-risk travelers and to gain a better understanding of the role of travel in emerging infectious diseases. The survey tool will take approximately 15 to 20 minutes to complete. Delta Airlines has agreed to cover all costs for printing the surveys. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total burden (in hours)
Travelers (Delta Airline International Flight Passengers)	5600	1	15/60	1400
Total				1400

Dated: January 15, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–1372 Filed 1–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5 p.m., February 5, 2003. 8 a.m.–4:30 p.m., February 6, 2003.

Place: The DoubleTree Guest Suites, 181 Church Street, Charleston, South Carolina 29401, telephone 843/577–2644, fax 843/577–9099.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the

development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001 and in November, 2001, the President completed the appointment of an initial roster of 10 Board members. In April, and again in August 2002, the President appointed additional members to ensure more balanced representation on the Board.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to Be Discussed: Agenda for this meeting will focus on program status, the special exposure cohort notice of proposed rule-making, Savannah River Site Health Effects Subcommittee activities, scientific issues workgroup report, and Board discussion regarding the dose reconstruction review process. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 15, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–1301 Filed 1–21–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of health

National Cancer institute, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Behavioral Research in Cancer Control.

Date: March 5, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Mary Jane Slesinski, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8045, Bethesda, MD 20892. 301/594/1566.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1367 Filed 1–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of 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 meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: February 19–20, 2003.

Open: February 19, 2003, 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 20, 2003, 9:45 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: February 20, 2003, 10:15 a.m. to 12 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, (301) 594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: February 19–20 2003.

Open: February 19, 2003, 1:15 p.m. to 5:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 19, 2003, 5:30 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 20, 2003, 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy BLVD, room 715, MSC 5452, Bethesda, MD 20892–5452, (301) 594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: February 19–20, 2003.

Open: February 19, 2003, 1:15 p.m. to adjournment.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: February 20, 2003, 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy BLVD, room 715, MSC 5452, Bethesda, MD 20892–5452, (301) 594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: February 19–20, 2003.

Open: February 19, 2003, 1:15 p.m. to 3 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: February 20, 2003, 3:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Open: February 20, 2003, 8 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy BLVD, room 715, MSC 5452, Bethesda, MD 20892–5452, (301) 594–8834, *hammondr@extra.niddk.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's Center's Home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research,; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1364 Filed 1–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–36, Review of R01 grants.

Date: February 14, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–48, Review of K22 and F31/F32 applications.

Date: February 20, 2003.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lynn M. King, PhD, Scientific Administrator, Scientific Review Branch, 45 Center Dr., Rm. 4AN–38K, National Institutes of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402. (301) 594–5006.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–33, Review of R01 grants.

Date: February 24, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892. (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1365 Filed 1–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with 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.

Name of Committee: Training Grant and Career Development Review Committee.

Date: February 13–14, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications,

Place: Westin Grand, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: February 16–17, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Sunspree Resort, 7601 East Indian Bend Road, Scottsdale, AZ 85250.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

Date: February 16–17, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Sunspree Resort, 7601 East Indian Bend Road, Scottsdale, AZ 85250.

Contact Person: Katherine M. Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

Date: February 20–21, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street NW., Washington, DC 2037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529 Bethesda, MD 20892–9529. 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: February 20–21, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–0660. *sawczuka@ninds.n.h.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–1366 Filed 1–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Medical Device User Fee Rates for Fiscal Year 2003 and Interim Procedures; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a correction notice that appeared in the **Federal Register** of January 10, 2003 (68 FR 1469). The document corrected a notice that appeared in the **Federal Register** of November 21, 2002 (67 FR 70228), which announced the rates and interim procedures for medical device user fees for fiscal year (FY) 2003. The November 21, 2002, document was inadvertently published with confusing language regarding the fee that must be paid by a small business that submits a 510(k) premarket notification for FDA review during FY 2003. The document intended to state that all 510(k)s submitted for FDA review during FY 2003 are subject to a standard fee of $2,187, and that all submitters who are subject to a fee, including a small business, are required to pay this fee. This document corrects the error in the correction notice.

ADDRESSES: Persons with access to the Internet may obtain further information on the Medical Device User Fee and Modernization Act of 2002 at http://www.fda.gov/cdrh/mdufma or http://www.fda.gov/cber/mdufma/mdufma.htm.

FOR FURTHER INFORMATION CONTACT: Frank Claunts, Office of Management and Systems (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–494, appearing in the **Federal Register** of January 10, 2003, the following correction is made:

1. On page 1469, in the second column, at the bottom of the page, item 3 is revised to read ''On page 70229, in table 1, in the fourth column, in the last row, correct 'None in FY 2003' to read '2.187'.''

Dated: January 16, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–1381 Filed 1–16–03; 3:21 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on 10 Nominations, Proposed for Listing in the Report on Carcinogens, Eleventh Edition

Background

The National Toxicology Program (NTP) solicits final public comments on the nominations reviewed in 2002 for listing in the Report on Carcinogens, Eleventh Edition (''the Report''). This Report (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301 (b) (4) of the Public Health Service Act, as amended, provides that the Secretary, (DHHS), shall publish a biennial report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

In 2002, ten nominations were reviewed for listing in the Eleventh Report. This review included two Federal and one non-government, scientific peer reviews and public comment and review. The three scientific review committees evaluated all available data relevant to the criteria for inclusion of candidate nominations in the Report. The criteria used in the review process and a detailed description of the review procedures, including the steps in the current formal review process, can be obtained from

the NTP home page Web site at *http://ntp-server.niehs.nih.gov/* or by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, e-mail: *jameson@niehs.nih.gov.*

Public Comment Requested

The nominations reviewed in 2002 are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and the recommendations from the three scientific peer reviews. The NTP will be making a final recommendation for these ten nominations for listing in, or changing the current listing from *reasonably anticipated to be a human carcinogen* to the *known to be a human carcinogen* category in the Eleventh Report.

Background documents provided to the review committees and the public are available on the Internet in PDF-format at the address above. Hard copies of these documents are also available upon request from Dr. Jameson (contact information above). The NTP will review the recommendations from each of the review committees and consider the public comments received throughout the process in making decisions regarding the NTP recommendations to the Secretary, DHHS, for listing of the nominated substances in the Report on Carcinogens, Eleventh Edition. The NTP solicits final public comment to supplement any previously submitted comments or to provide comments for the first time on any substance in the following table. Comments will be accepted for 60 days from the publication date of this announcement and should be directed to Dr. C. W. Jameson at the address provided above. Individuals submitting public comments are asked to include relevant contact information [name, affiliation (if any), address, telephone, fax, e-mail, and sponsoring organization (if any)].

Dated: January 10, 2003.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY OF RG1,[1] RG2[2] AND NTP BOARD SUBCOMMITTEE[3] RECOMMENDATIONS FOR THE NOMINATIONS REVIEWED IN 2002 FOR LISTING IN THE REPORT ON CARCINOGENS,[4] 11TH EDITION

Nomination/CAS No.	Primary uses or exposures	RGI action	RG2 action	NTP board subcommittee action
1-Amino-2,4-dibromoanthraquinone/(81–49–2).	An anthraquinone-derived vat dye that is used in the textile industry.	Motion to list 1-amino-2,4-dibromoanthraquinone as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list 1-amino-2,4-dibromoanthraquinone as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list 1-amino-2,4-dibromoanthraquinone as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0)
Selected Heterocyclic Amines (three nominations): (1) MeIQ (2-Amino-3,4-dimethyl-imidazo- [4,5-f]quinoline)/* (77094–11–2) (2) MeIQx (2-Amino-3,8-dimethyl-imidazo[4,5-f] quinoxaline)/(77500–04–0) (3) PhIP (2-Amino-1-methyl-6-phenyl-imidazo[4,5-b]pyridine)/(105650–23–5)	MeIQ, MeIQx, and PhIP are heterocyclic amines that are formed during heating or cooking and are found in cooked meat and fish.	Motion to list MeIQ as reasonably anticipated to be a human carcinogen passed by unanimous vote (6/0).	Motion to list MeIQ as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list MeIQ as reasonably anticipated to be a human carcinogen passed by a vote of 8 yes, 0 no and 1 abstention. Abstention because member felt insufficient data for human exposure to list in the RoC.
		Motion to list MeIQx as reasonably anticipated to be a human carcinogen passed by a vote of 5 yes to 1 no. Negative vote cast because member felt data meet criteria to list as known human carcinogen.	Motion to list MeIQx as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list MeIQx as reasonably anticipated to be a human carcinogen passed by a unanimous vote (9/0).
		Motion to list PhIP as reasonably anticipated to be a human carcinogen passed by a vote of 5 yes to 1 no. Negative vote cast because member felt data meet criteria to list as known human carcinogen.	Motion to list PhIP as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list PhIP as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0).

SUMMARY OF RG1,[1] RG2[2] AND NTP BOARD SUBCOMMITTEE[3] RECOMMENDATIONS FOR THE NOMINATIONS REVIEWED IN 2002 FOR LISTING IN THE REPORT ON CARCINOGENS,[4] 11TH EDITION—Continued

Nomination/CAS No.	Primary uses or exposures	RGI action	RG2 action	NTP board subcommittee action
Cobalt Sulfate/(10026–2401).	Cobalt sulfate is used in electroplating and electrochemical industries. It is also used as a coloring agent for ceramics, a drying agent in inks, paints, varnishes and linoleum, and has been added to animal feed as a mineral supplement.	Motion to list cobalt sulfate as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0).	Motion to list cobalt sulfate as reasonably anticipated to be a human carcinogen passed by a vote of 8 yes and 1 no. Negative vote cast because member felt exposure data in background document needed to be more specific for cobalt sulfate.	Motion to list cobalt sulfate as reasonably anticipated to be a human carcinogen passed by a vote of 8 yes to 1 no. Negative vote cast because member felt human exposure data not specific for cobalt sulfate.
Diethanolamine (DEA)/(111–42–2).	DEA is used in the preparation of surfactants used in liquid laundry, dishwashing detergents, cosmetics, shampoos, and hair conditioners; as a surface-active agent and corrosion inhibitor in metalworking fluids and as a dispersant in agricultural chemical formulations.	Motion *not* to list DEA in the RoC passed by a vote of 7 yes to 2 no. Negative votes cast because members felt data sufficient to list as reasonably anticipated to be a human carcinogen.	Motion *not* to list DEA in the RoC passed by unanimous vote (9/0).	Motion *not* to list DEA in the RoC passed by a vote of 8 yes to 1 no. Negative vote cost because member felt data sufficient to list as reasonably anticipated to be a human carcinogen.
Naphthalene (91–20–3)	Naphthalene is used as a intermediate in the synthesis of many industrial chemicals, and has been used as an ingredient in some moth repellants and toilet bowl deodorants, and to control lice on livestock and poultry.	Motion to list naphthalene as reasonably anticipated to be a human carcinogen passed by a vote of 6 yes to 1 no. Negative vote cast because member felt data not sufficient to list in the RoC.	The RG2 could not make a majority recommendation for either listing or not listing naphthalene in the RoC.	Motion to list naphthalene as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0).
Nitrobenzne (98–95–3)	Nitrobenzene is used mainly in the production of aniline, itself a major chemical intermediate in the production of dyes.	Motion to list nitrobenzene as reasonably anticipated to be a human carcinogen passed by unanimous vote (7/0).	Motion to list nitrobenzene as reasonably anticipated to be a human carcinogen passed by unanimous vote (7/0).	Motion to list nitrobenzene as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0).
Nitromethane (75–52–5) ...	Nitromethane is used in specialized fuels, in explosives and in the synthesis of nitromethane derivatives, pharmaceuticals, agricultural soil fumigants and industrial antimicrobials.	Motion to list nitromethane as reasonably anticipated to be a human carcinogen passed by unanimous vote (8/0).	Motion to list nitromethane as reasonably anticipated to be a human carcinogen passed by unaimous vote (9/0).	Motion to list nitromethane as reasonably anticipated to be a human carcinogen passed by unanimous vote (9/0).
4,4′-Thiodianiline (139–65–1).	4,4′-Thiodianiline has been produced commercially since the early 1940's as an intermediate of several diazo dyes.	Motion to list 4,4′-thiodianiline as reasonably anticipated to be a human carcinogen passed by a vote of 6 yes to 2 no. Negative votes cast because members felt there was not sufficient exposure to list in the RoC.	Motion to list 4,4′-thiodianiline as reasonably anticipated to be a human carcinogen passed by a vote of 6 yes to 3 no. Negative votes cast because members felt there was not sufficient exposure to list in the RoC.	Motion to list 4,4′-thiodianiline as reasonably anticipated to be a human carcinogen passed by a vote of 5 yes to 2 no with 2 abstentions. Negative votes and abstentions cast because members felt there was not sufficient exposure to list in the RoC.

[1] The NIEHS Review Committee for the Report on Carcinogens (RG1).
[2] The NTP Executive Committee* Interagency Working Group for the Report on Carcinogens (RG2).

*Agencies from NTP Executive Committee represented on RG2 include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), National Center for Environmental Health of the Centers for Disease Control and Prevention (NCEH/CDC), National Center for Toxicological Research of the Food and Drug Administration (NCTR/FDA), National Institute for Occupational Safety and Health/CDC (NIOSH/CDC), Occupational Safety and Health Administration (OSHA), National Cancer Institute of the National Institutes of Health (NCI/NIH), and National Institute of Environmental Health Sciences/NIH (NIEHS/NIH).

[3] The NTP Board of Scientific Counselors Report on Carcinogens Subcommittee (the External Peer Review Group).

[4] RoC—Report on Carcinogens.

[FR Doc. 03–1368 Filed 1–21–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–01]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Agency—Lease Requirements, Recordkeeping Requirements

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:* February 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0006) 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, AYO, 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 with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Public Housing Agency—Lease Requirements, Recordkeeping Requirements.

OMB Approval Number: 2577–0006.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHA) are required to keep records for implementation of Federal regulations governing dwelling leases in public housing. The information is retained by the PHAs that manage public housing and is used for operating purposes.

Respondents: Individuals or households, State, local or tribal government.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,330	3,330		48		158,400

Total Estimated Burden Hours: 158,400.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 14, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–1274 Filed 1–21–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: Between November 14, 2001, and November 22, 2002, Region 1 of the Fish and Wildlife Service (we, the Service) approved 11 Habitat Conservation Plans (HCPs) and associated permits for the incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). We also amended two HCPs and associated permits. In addition, we issued two permits for Safe Harbor Agreements and one permit for a Candidate Conservation Agreement with Assurances, pursuant to section 10(a)(1)(A) of the Act.

Copies of the permits and associated decision documents are available upon request. Charges for copying, shipping and handling may apply.

ADDRESSES: Documents are available from the Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: If you would like copies of any of the above documents, please contact Shelly

McKeever, Administrative Assistant, at telephone (503) 231–6241.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulation prohibit the take of wildlife species listed as endangered or threatened, respectively. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

Between November 14, 2001, and November 22, 2002, Region 1 of the Service issued or amended the following permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) and section 10(a)(1)(A) of the Act. We issued or amended each permit after making the following determinations: the application had been submitted in good faith; all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of listed species; and the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives pursuant to the National Environmental Policy Act of 1969.

Approved plan/permit	Permit No.	Issuance date
Habitat Conservation Plans:		
Redhawk Communities	TE051895–0	01/15/02
Dos Pueblos Golf Links (2 permits)	TE045997–0	01/16/02
	TE046002–0	01/16/02
Temecula Ridge Apartments and Temecula Village	TE052816–0	02/08/02
Natomas Basin, Metro Air Park	TE036473–0	02/21/02
Cyanotech Aquaculture Facility	TE051040–0	03/18/02
Mayer Property	TE054227–0	06/04/02
California Department of Corrections Statewide Electrified Fence Project	TE058060–0	06/12/02
Multiple Species Conservation Program, County of San Diego Subarea Plan, Permit Amendment for Cielo Ridge and Rancho de Lusardi.	PRT–840414	07/09/02
West Fork Timber, Permit Amendment for lynx and bulltrout	TE777837–2	07/24/02
University of California, Davis—2002 Campus Projects	TE060073–0	07/31/02
Mission View Estates	TE060752–0	08/08/02
Lathrop Wells	TE060997–0	08/16/02
AT&T—Point Arena Mountain Beaver	TE063833–0	10/28/02
Candidate Conservation Agreements With Assurances:		
Soulen Ranch	TE055219–0	09/29/02
Safe Harbor Agreements:		
Forster-Gill, Inc.	TE057898–0	06/18/02
Umikoa Ranch	TE044015–0	12/05/01

Copies of these permits, the accompanying HCP, Safe Harbor Agreement, or Candidate Conservation Agreement with Assurances, and associated documents are available upon request. Decision documents for each permit include a Findings and Recommendation; a Biological Opinion; and either a Finding of No Significant Impact, a Record of Decision, or an Environmental Action Statement. Associated documents may also include an Implementing Agreement, Environmental Assessment, or Environmental Impact Statement, as applicable.

Dated: January 15, 2003.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 03–1302 Filed 1–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation (''POSC'')

Notice is hereby given that, on October 17, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Satyam Computer Services, Ltd., Houston, TX; and IMS Corporation, Moscow, Russia have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petrotechnical Open Software Corporation (''POSC'') intends to file additional written notification disclosing all changes in membership.

On January 14, 1991, Petrotechnical Open Software Corporation (''POSC'') filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on July 19, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 12, 2002 (67 FR 57853).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–1257 Filed 1–21–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, Justice.

ACTION: Meeting Notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and fourteen states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal State system to exchange such records.

The United States Attorney General appointed fifteen persons from federal and state agencies to serve on the Compact Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system.

Matters for discussion are expected to include: (1) Proposed Amendments to the Delayed Fingerprint Submission Requirement Rule, (2) State/FBI Qualification Requirements and Audit Criterion for Participation in the National Fingerprint File, (3) Status Report on the National Fingerprint Applicant Check Study, (4) Discussion on Privatization Initiatives and the Development of Security/Management Control Standards, (5) Proposed Sanctions Rule, (6) Proposed Improvements to National Fingerprint File Responses for Electronic Fingerprint Based Requests for Criminal History Records Checks.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Ms. Cathy L. Morrison at (304) 625–2736, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. to 5 p.m. on February 25–26, 2003.

ADDRESSES: The meeting will take place at the Renaissance Scottsdale Resort, 6160 North Scottsdale Road, Scottsdale, Arizona, telephone (480) 991–1414.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Cathy L. Morrison, Interim FBI Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0148, telephone (304) 625–2736, facsimile (304) 625–5388.

Dated: January 14, 2003.

Bobby P. Hamil, Jr.,

Acting Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 03–1303 Filed 1–21–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

OMB Approval of Information Collection; Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Notice of OMB approval under the Paperwork Reduction Act of 1995.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) is announcing that the Office of Management and Budget (OMB) has approved, under the Paperwork Reduction Act of 1995, a new collection of information under the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended. This notice announces both the OMB approval number and expiration date.

COMPLIANCE DATE: As of January 22, 2003, affected parties must comply with the new information collection requirements described below which have been approved by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–0036 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On November 6, 2002, OWCP requested OMB approval under the PRA of a new information collection for the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. 7384 *et seq.* The new information collection requirements that needed OMB approval are derived from sections 7384d and 7384v(c) of the EEOICPA, and consists of requests for supplemental employment evidence required when an alleged employment history cannot be verified by the Department of Energy.

On January 8, 2003, OMB approved this information collection request for three years. The OMB control number assigned to this information collection is 1215–0199. The approval for this information collection will expire on January 31, 2006.

Signed at Washington, DC, this 16th day of January, 2003.

Shelby Hallmark,

Director, Office of Workers' Compensation Programs, Employment Standards Administration.

[FR Doc. 03–1355 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–CR–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0143(2003)]

Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)); Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment on its proposal to extend OMB approval of the information-collection requirements contained in its Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)). This standard regulates the use of presence-sensing devices (''PSDs'') in mechanical power-press safety systems; a PSD (*e.g.,* a photoelectric field or curtain) automatically stops the stroke of a mechanical power press when the device detects an operator entering a danger zone near the press. Accordingly, the standard protects employees from serious crush injuries, amputations, and death.

DATES: Submit written comments on or before March 24, 2003.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0143(2003), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217 (h)) is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney or Todd Owen at (202) 693–2222. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov*, and select ''*Information Collection Requests.*''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

A number of paragraphs in OSHA's Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)) (the ''Standard'') contain paperwork requirements. These requirements include: Certifying brake-monitor adjustments, alternatives to photoelectric PSDs, safety-system design and installation, and employee training; annual recertification of safety systems; establishing and maintaining the original certification and validation records, as well as the most recent recertification and revalidation records; affixing labels to test rods and to certified and recertified presses; and notifying an OSHA-recognized third-party validation organization when a safety system component fails, the employer modifies the safety system, or a point-of-operation injury occurs. In addition, Appendix A of § 1910.217 provides detailed information and procedures required to meet the certification/validation provisions, as well as the design requirements, contained in the Standard. Accordingly, Appendix A supplements and explains the certification/validation provisions of the PSDI Standard, and does not specify new or additional paperwork requirements for employers. Appendix C § 1910.217 describes the requirements and procedures for obtaining OSHA recognition as a third-party validation organization; therefore, the paperwork requirements specified by this appendix do not impose burden hours or cost directly on employers who use PSDs.

By complying with these paperwork requirements, employers ensure that PSDI-equipped mechanical power presses are in safe working order, thereby preventing severe injury and death to press operators and other employees who work near this equipment. In addition, these records provide the most efficient means for an OSHA compliance officer to determine that an employer performed the requirements and that the equipment is safe.

To date no third-party organization is available to validate employer and manufacturer certifications that their PSDI equipment and practices meet the requirements of the Standard. Therefore, the Agency cannot attribute burden hours and cost to the paperwork requirements of the Standard.

The Agency is currently conducting a Lookback Review on PSDI pursuant to Section 610 of the Regulatory Flexibility Act and section 5 of Executive Order 12866 on Regulatory Planning and Review (67 FR 55181, Docket No. S225A). The purpose of this review is to determine, while protecting worker safety, whether there are ways to modify this standard to make implementation more practical, to reduce regulatory burden on small business and to improve its effectiveness. The public comment period for the PSDI Lookback Review closes on January 27, 2003.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is proposing to extend OMB approval of the information-collection requirements specified by the Standard even though the Agency can attribute no burden hours and cost to these requirements. To date no third-party organization is available to validate employer and manufacturer certifications that their PSDI equipment and practices meet the requirements of the Standard. This notice provides an opportunity for the public to comment on the proposed extension of OMB's approval of the Information Collection Request on the Standard on Presence Sensing Device Initiation (PSDI). The Agency will include a summary of these comments as part of its request to OMB to approve these paperwork requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Standard on Presence Sensing Device Initiation (PSDI) (29 CFR 1910.217(h)).

OMB Number: 1218–0143.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or tribal governments.

Number of Respondents: 0.

Frequency of Recordkeeping: On occasion; annually; other (initially).

Average Time per Response: 0.

Estimated Total Burden Hours: 0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on January 14, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–1327 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11061, *et al.*]

Proposed Exemptions; John Hancock Life Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffittb@pwba.dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

John Hancock Life Insurance Company, Located in Boston, MA

[Application No. D–11061]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 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: Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) and 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and 4975(c)(1)(D) of the Code shall not apply to: [1]

(a) The purchase of a timber asset (Timber Asset(s)), as defined in section III(f), below, from International Paper Company or any affiliate, as defined in section III(a), below, (collectively, International Paper) by a certain insurance company separate account (ForesTree IP), as defined in section III(d), below, maintained and managed by Hancock, as defined in section III(e), below, for the investment of the assets of one or more employee pension benefit plans sponsored by International Paper (the IP Plan or IP Plans); provided that the following conditions are satisfied:

(1) The price paid by ForesTree IP for the Timber Asset is determined by an independent, qualified appraiser, as defined in section III(h), below, as of the date of the transaction,

(2) The fair market value of the Timber Asset sold to ForesTree IP must be documented by an appraisal report in writing issued, as of the date of the transaction, by the independent, qualified appraiser;

(3) The price paid by ForesTree IP for the Timber Asset does not exceed the fair market value of such asset at the time of the purchase; and

(4) The general conditions set forth in section II, below, are satisfied.

(b) The sale of a timber product (Timber Product(s)), as defined in section III(g), below, to International Paper by ForesTree IP; provided that the following conditions are satisfied:

(1) Prior to soliciting bids for the sale of a Timber Product, Hancock establishes a minimum bid (the Minimum Bid) based on its assessment of the fair market value of the Timber Product offered for sale;

(2) Hancock (or its designee) solicits from each party on the buyers list (the Buyer's List), as defined in section III(c), below, for the relevant geographic area in which the Timber Product is located, a written bid for the purchase of the Timber Product offered for sale;

(3) The highest price bid for the Timber Product offered for sale must meet or exceed the Minimum Bid established by Hancock and must not be less than the fair market value of such Timber Product at the time the contract for sale is legally binding on the parties involved;

(4) Where International Paper is the highest price bidder for the Timber Product offered for sale, the transaction may not go forward, unless Hancock has received bids on such Timber Product from at least two (2) other bidders, in addition to International Paper, provided that each such bidder satisfies the definition of a *bona fide* bidder, as set forth in section III (i), below; and provided further that neither Hancock's general account nor any other account managed by Hancock is either of the two other bidders; and

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

(5) The general conditions set forth in section II, below, are satisfied.

Section II: General Conditions

(a) Any IP Plan that invests in ForesTree IP has total assets in excess of $100 million;

(b) Hancock acts as a discretionary investment manager for ForesTree IP;

(c) Hancock negotiates on behalf of ForesTree IP the terms and conditions of any purchase of a Timber Asset by ForesTree IP from International Paper and the terms and conditions of any sale of a Timber Product by ForesTree IP to International Paper;

(d) Prior to ForestTree IP entering into any purchase of a Timber Asset or any sale of a Timber Product, Hancock determines on behalf of such account that each such transaction is feasible, in the interest of the account based on the investment policy and objectives of the account, and protective of the participants in the account;

(e) The terms and conditions of each transaction involving the sale of a Timber Asset by International Paper to ForesTree IP or the purchase of a Timber Product by International from ForesTree IP are at least as favorable to ForesTree IP as the terms obtainable by ForesTree IP in a similar transaction negotiated at arm's length with an unrelated third party;

(f) The transactions subject to this exemption are not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(g) Each transaction subject to this exemption is exclusively a cash transaction;

(h) ForesTree IP does not purchase Timber Assets from or sell Timber Products to Hancock's general account or any other account managed by Hancock;

(i) The investment of plan assets by any IP Plan in ForesTree IP does not exceed 20 percent (20%) of the total assets of such plan;

(j) The total amount of contributions received by Hancock from International Paper on behalf of the IP Plans and allocated to ForesTree IP must not in the aggregate exceed $100 million; and

(k) Hancock maintains, or causes to be maintained, within the United States for a period of six (6) years from the date of each transaction which is subject to this exemption, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described, below in paragraph (1)(1), to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Hancock, the records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than Hancock shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (l)(1).

(l)(1) Except as provided in subparagraph (2) of this paragraph (l) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (k), above, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, or the Internal Revenue Service;

(ii) Any fiduciary of an IP Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to an IP Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of an IP Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (l)(1)(ii)–(iv) are authorized to examine the trade secrets of Hancock or its affiliates or commercial or financial information which is privileged or confidential.

Section III: Definitions

(a) The term, ''affiliate'' or ''affiliates,'' of a person means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, ''Buyer's List,'' means a comprehensive and current list of the names of the active forest products companies and prospective buyers of Timber Products in the geographic area in which such Timber Products are located, which is compiled and maintained by Hancock for each such geographic area for the purpose of selling Timber Products in such area on behalf of any of the timber accounts managed by Hancock, provided that, with respect to the Buyer's List utilized by ForesTree IP:

(1) International Paper's name may not be added to the Buyer's List for a geographic area solely for the purpose of a sale by ForesTree IP of Timber Products in such area; and

(2) The name of a prospective buyer of Timber Products in a geographic area may not be removed by Hancock from the Buyer's List for such geographic area, unless such buyer:

(A) Has failed to perform satisfactorily in a previous transaction;

(B) Is no longer in business;

(C) Requests, orally or in writing, to be removed from such list; or

(D) Has failed to respond for a period of two (2) years to previous solicitations by ForesTree IP to bid on Timber Products offered for sale in the geographic area;

(d) The term, ''ForesTree IP,'' refers to the non-pooled insurance company separate account maintained and managed by Hancock for the investment of assets of one or more of the IP Plans, as well as to any partnership, limited liability company, or corporation in which ForesTree IP invests. The term, ''ForesTree IP,'' does not include the other ForesTree Separate Accounts managed by Hancock.

(e) The term, ''Hancock,'' means John Hancock Financial Services (Financial Services); John Hancock Life Insurance Company (JHLIC); John Hancock Variable Life Insurance Company (Variable Life); Hancock Natural Resources Group (Resources Group); John Hancock Timber Resource Corporation (Timber Resource); or other affiliates of JHLIC, as defined in section III(a), above.

(f) The term, ''Timber Asset(s),'' means a fee simple in timberland (and appurtenant rights) [2], or a timber lease, or a timber deed, provided that, with respect to any timber lease, or timber deed:

(1) The underlying fee simple is owned by a person other than International Paper, Hancock, or any other account managed by Hancock at the time of the sale; and

(2) The entire deed or lease held by International Paper is purchased by ForesTree IP.

[2] It is represented that certain property rights, including mineral rights, easements, and recreational leases, are appurtenant to a fee simple and are bought and sold, and appraised along with the fee simple.

(g) The term, ''Timber Product(s),'' means standing timber or timber in the form of logs.

(h) The term, ''independent, qualified appraiser,'' means an individual or firm which is qualified to serve in the capacity as an appraiser; is independent of the parties in interest engaging in the transaction and their affiliates; and satisfies the following conditions:

(1) Other than serving as the independent, qualified appraiser for a transaction which is subject to this exemption, the individual or firm has no current employment relationship with Hancock or with International Paper;

(2) No individual or firm may serve as an independent, qualified appraiser during any year in which the gross receipts such individual or firm received from business with Hancock and from business with International Paper for that year exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year;

(3) If an individual is selected to serve as the independent, qualified appraiser, then such individual must:

(A) Have a forestry degree; and

(B) Have a minimum of five (5) years of experience as a timberland appraiser; or

(C) Otherwise demonstrate proficiency in timberland appraisal work which is equivalent to the level of expertise demonstrated by the requirements, as set forth in section III(h)(3)(A) and (B), above;

(4) If a firm is selected to serve as the independent, qualified appraiser, then such firm must have:

(A) A minimum of five (5) years of experience as a timberland appraiser; or

(B) Otherwise demonstrate proficiency in timberland appraisal work; and

(5) The individual or the firm that serves as the independent, qualified appraiser for transactions covered by this exemption must have the ability to access appropriate timberland sales comparison data.

(i) The term, ''*bona fide* bidder,'' means a bidder on a Timber Product offered for sale by ForesTree IP, only if

(1) The bidder has made an offer to purchase the Timber Product, in accordance with the terms of the bid solicitation;

(2) The bidder's name appears on the Buyer's List at the time of bid solicitation and at the time of the bid;

(3) Hancock neither knows or should know of any impediment to the bidder's consummation of the purchase of the Timber Product offered for sale upon which the bidder has bid; and

(4) Hancock has no reason to believe that the bid was not made in good faith by the bidder with the present intent of procuring the Timber Product offered for sale by ForesTree IP.

Summary of Facts and Representations

1. The Retirement Plan of the International Paper Company, (the IP Retirement Plan), located in Memphis, Tennessee is affected by this proposed exemption. The IP Retirement Plan is an employee pension benefit plan covered by the Act. As of January 10, 2002, the estimated number of participants and beneficiaries in the IP Retirement Plan was: (a) 61,100 actives; (b) 35,600 retired or separated individuals; and (c) 30,600 terminated vested individuals.

International Paper and certain of its affiliates sponsor and maintain the IP Retirement Plan for their employees. As employers any of whose employees are covered by the IP Retirement Plan, International Paper and certain of its affiliates are parties in interest with respect to such plan, pursuant to section 3(14)(C) of the Act.

The fair market value of the total assets of the IP Retirement Plan was approximately $6,884,329,000, as of June 30, 2001. The assets of the IP Retirement Plan are held in the International Paper Company Trust Agreement to Fund Pension Plans (the IP Trust). It is represented that the IP Trust may also, from time to time, hold the assets of other plans sponsored and maintained by International Paper and its affiliates for their employees. The trustee of the IP Trust is State Street Bank and Trust Company (State Street).

2. The application for this proposed exemption was submitted on behalf of JHLIC, Financial Services, Variable Life, Resources Group, and Timber Resource. JHLIC is a wholly-owned subsidiary of Financial Services. Variable Life is a wholly-owned subsidiary of JHLIC. Resources Group and Timber Resource are wholly-owned indirect subsidiaries of JHLIC.[3]

Through Resources Group, John Hancock manages timberland for its customers and for its own general account. In this regard, as of June 30, 2001, Resources Group managed over 2.4 million acres of timberland in the United States valued at approximately $2.2 billion, and managed nearly .5 million acres of Australian timberland valued at approximately $362 million.

3. John Hancock offers annuity contracts and funding agreements to customers (Contract Holders), including employee pension benefit plans subject to the Act. Such Contract Holders may invest directly or indirectly in timberland through pooled and non-pooled separate accounts available under John Hancock group annuity contracts and funding agreements. It is represented that these contracts and agreements provide that, in accordance with the Contract Holders' direction, the premium or contribution received from such Contract Holder will be allocated internally on the books of John Hancock to segregated asset accounts or ''separate accounts.'' The separate account investments are held in John Hancock's name, but the value of the contract or agreement to the Contract Holder fluctuates with the value of the investments allocated to the separate account. The direct expenses of managing the investments and John Hancock's fees are charged against the value of the separate account.

4. John Hancock manages a number of separate accounts, both pooled and non-pooled, that invest in timber. These separate accounts are generally known as the ForesTree Separate Accounts. It is represented that these ForesTree Separate Accounts may invest in Timber Assets, including a fee simple (with appurtenant rights), as well as timber leases, and timber deeds. It is represented that a timber lease is a contract between a landowner (the lessor) and another party (the lessee) under which the lessee is granted the right to use the land for the production of lumber for a specified period of time. Timber leases typically specify how the land is to be managed and the condition to which the land is to be returned upon expiration of the lease. A timber deed is a contract under which the landowner grants to a third party the right (but not the obligation) to harvest existing timber.

It is represented that over one million acres of Timber Assets are allocated to the ForesTree Separate Accounts. As of June 30, 2001, these Timber Assets had a value of over $1 billion.

As part of its timberland management, John Hancock or an affiliate also periodically sells Timber Products in the form of standing timber or logs from its ForesTree Separate Accounts to companies in the forest products industry. John Hancock, through its affiliates, has the discretion to determine when and how much of the Timber Products in the ForesTree Separate Accounts to sell, based on the market conditions for each type of timber and the geographic location.

[3] Throughout the Summary of Facts and Representations for this proposed exemption, JHLIC and Variable Life are referred to collectively as ''John Hancock,'' and the term, ''Hancock,'' is defined, as set forth in section III(e) of this proposed exemption.

John Hancock is the sole legal owner of the assets in each of the ForesTree Separate Accounts. Under the applicable contract or agreement, John Hancock or an affiliate has the right to control, manage, and administer the ForesTree Separate Accounts, including the sole discretion to select and dispose of investments in such accounts in accordance with the investment policy for such accounts.

John Hancock's management responsibilities under the ForesTree Separate Accounts are performed by Resources Group, a wholly-owned indirect subsidiary of John Hancock which was established in 1995. Subject to review and approval by John Hancock's internal investment committees, Resources Group is responsible for all decisions regarding the acquisition and disposition of timberland properties held in the ForesTree Separate Accounts. In addition, Resources Group is responsible for the ongoing management of John Hancock's timberland properties, including site preparation and planting, road building and construction, leasing to tenants, maintenance, acquisition of insurance, and payment of taxes. It is represented that on-site work is performed either by independent forest managers under contract to Resources Group or by employees of Timber Resource. In this regard, Resources Group currently contracts with three regional forest management firms. Such firms include Olympic Resource Management (in the western United States and Canada), Resource Management Services (in the southern United States), and Wagner Forest Management (in the northern United States). In addition to these regional forest management firms, Cahaba Forest Management, Inc., a wholly-owned subsidiary of Resources Group established in February of 2000, provides property management services and manages International Paper's Redstone investment in Alabama.

5. ForesTree IP is a non-pooled separate account established on January 1, 2000. ForesTree IP is maintained pursuant to a Group Annuity Contract (No. 14756 GAC), entered into on January 31, 2000, between John Hancock and the IP Trust. ForesTree IP is one of the ForesTree Separate Accounts managed by John Hancock that are invested in Timber Assets. ForesTree IP is the only one of the ForesTree Separate Accounts to which the relief provided by this proposed exemption is applicable. It is represented that, as of December 31, 2001, the real, dollar-weighted internal rate of return since the inception of ForesTree IP was 6.5 percent (6.5%) (after John Hancock's fees).[4] ForesTree IP was established with an intended allocation of $25 million to be invested in Timber Assets. In February 2000, $10 million of the allocation was invested in Timber Assets in Alabama. John Hancock expects that the remaining $15 million will be allocated before the end of the year 2002. In addition, it is represented that there is the potential for additional funding in the range of $10 million to $30 million.

Following an expected allocation of $25 million to ForesTree IP, it is represented that the percentage of the fair market value of the total assets of the IP Retirement Plan (approximately $6.9 billion, as of June 30, 2001) involved in the proposed transactions will be .36 percent (.36%). It is represented that approximately .27 percent (.27%) of the fair market value of the assets of the IP Retirement Plan are invested in timber related assets outside of ForesTree IP.

As a result of the investment in ForesTree IP by the IP Retirement Plan, the assets of such account are deemed to be assets of the IP Retirement Plan, pursuant to the Department's regulations, as set forth in 29 CFR § 2510.3–101(h)(1)(iii).

Assets invested in ForesTree IP are managed by John Hancock and Resource Group in accordance with the investment policy established for the account. The investment objective of ForesTree IP is to establish and maintain a diversified portfolio of individual or shared equity interests in timberland investments. Timberland investments consist primarily of interests in timber producing real estate, and in contracts relating to real estate for the production and harvesting of Timber Products. Timberland investments may be located either inside the United States, or, with the consent of the Contract Holder, the IP Retirement Plan, outside the United States.[5]

Pursuant to the investment policy of ForesTree IP, Timber Assets are purchased or sold opportunistically to generate returns to meet performance objectives of the account. ForesTree IP may invest directly in a Timber Asset, or it may invest in entities that own Timber Assets, directly or indirectly. These entities include corporations, partnerships, 501(c)(25) organizations, and their international equivalents (Holding Entities). Although ForesTree IP does not currently invest through such Holding Entities, if it were to do so, it is represented that Resources Group would likely be appointed the investment manager of such entity, or that Resources Group (or an employee) would be appointed as an officer of the entity that holds the Timber Assets.

It is represented that the assets of any of the Holding Entities through which ForesTree IP may invest in Timber Assets could constitute plan assets, pursuant to the Department's regulations, as set forth at 29 CFR § 2510.3–101(a)(2). It is further represented that as investment managers for ForesTree IP, John Hancock, and Resources Group are fiduciaries of the IP Retirement Plan, pursuant to section 3(14)(A) of the Act. Resources Group is also a fiduciary with respect to the IP Retirement Plan, pursuant to section 3(14)(A) of the Act, as discretionary manager of the timberland held by any pass-through entity.

6. John Hancock desires to purchase Timber Assets from International Paper on behalf of ForesTree IP. In this regard, John Hancock anticipates that $1 million to $2 million worth of Timber Assets will be marketed by International Paper for sale over the next two (2) years, as a result of the May 2000 merger of International Paper and Champion International. As the sale of Timber Assets from International Paper to ForesTree IP would constitute a violation of section 406(a)(1)(A) and (D) of the Act, John Hancock and its affiliates request an administrative exemption; provided certain general and specific conditions are satisfied at the time each transaction is entered.

It is further represented that section 406(a)(1)(A) and (D) of the Act would be violated by any sale of Timber Products from ForesTree IP to International Paper. Accordingly, John Hancock also

[4] The applicants have not requested an exemption for the receipt of incentive management fees or other fees in connection with John Hancock or its affiliates serving as investment manager for ForesTree IP under the terms of the group annuity contract (No. 14756 GAC) between John Hancock and the IP Trust. The Department herein offers no opinion as to whether the fee structure, as set forth in such group annuity contract, raises issues under the prohibited transaction provisions of section 406 of the Act, nor is the Department providing relief, herein, for the receipt by John Hancock or any of its affiliates of incentive management fees or other fees in connection with the assets held by ForesTree IP.

[5] The applicants represent that John Hancock satisfies the indicia of ownership requirements, as set forth in section 404(b) of the Act. In this regard, it is represented that where John Hancock invests in foreign timber, it does so through an entity qualified as a ''real estate operating company,'' pursuant to 29 CFR § 2510.3–101(e) of the Department's plan assets regulation. Further, it is represented that the indicia of ownership of such entity is held in the United States. The Department, herein, expresses no opinion as to whether the applicants have satisfied the indicia of ownership requirements, as set forth in section 404(b)of the Act.

requests an administrative exemption that would permit it or Resources Group periodically to sell Timber Products from ForesTree IP, to International Paper; provided certain general and specific conditions are satisfied at the time each transaction is entered.

7. In the opinion of John Hancock, the proposed transactions are in the interest of the IP Retirement Plan and any IP Plan subsequently sponsored by International Paper which participates through the IP Trust in ForesTree IP. In this regard, if permitted to purchase Timber Assets held by International Paper, ForesTree IP will have access to the broadest range of potential timber investments, in a market in which such investments are limited.

It is represented that an exemption permitting the sale of Timber Products from ForesTree IP to International Paper is in the interest of the IP Plan and its participants and beneficiaries, because it will enhance John Hancock's ability to maximize the return of such account. In this regard, the exemption will create a more competitive market in which to sell Timber Products harvested from the Timber Assets held on behalf of such account. John Hancock notes that the number of purchasers of Timber Products has declined in the last few years due to the consolidation of the forest products industry. In the opinion of John Hancock, in order to ensure that ForesTree IP is obtaining the highest value for its Timber Products, it should be able to market such products to all available purchasers, including International Paper. It is represented that, if International Paper is precluded from bidding on Timber Products sold by ForesTree IP, the account may not obtain the highest price for its timber to the detriment of the IP Retirement Plan.

8. It is represented that the proposed exemption contains sufficient safeguards to protect the participants and beneficiaries of the IP Retirement Plan. In this regard, before purchasing a Timber Asset from International Paper, John Hancock, as the investment manager of ForesTree IP, will independently determine that the purchase of such asset is in the interest of the account and consistent with the policies and objectives of such account. Moreover, John Hancock will obtain an appraisal from an independent, qualified appraiser of the value of the Timber Asset prior to purchase to ensure that ForesTree IP pays no more than the fair market value of such asset. The fair market value of the Timber Asset sold to ForesTree IP must be documented by an appraisal report in writing issued, as of the date of the transaction, by the independent, qualified appraiser, and such report must be retained for a period of six (6) years from the date of the transaction.

Because of the ongoing nature of the requested exemption, it is represented that the applicants cannot now identify the appraisers who will perform the required appraisals. However, the Department notes that any appraiser selected to value the Timber Asset to be purchased by ForesTree IP from International Paper, pursuant to the terms of this exemption, must satisfy the requirements for independence and qualification, as set forth in section III(h) of this exemption.

Before selling a Timber Product, John Hancock will independently determine that the sale is in the interest of ForesTree IP. Further, it is represented that the price received by ForesTree IP for Timber Products offered for sale will be established through a competitive bidding process among the prospective buyers in the relevant geographic area in which the Timber Products are located.

It is represented that John Hancock's regional forest managers compile and maintain Buyer's Lists of the names of active forest products companies and timber buyers in each geographic region in which Timber Products are located for the purpose of selling such Timber Products for any timber account. The relevant geographic area is generally a 100-mile radius from the harvest area, because the cost to truck logs beyond this distance is typically uneconomical. However, there is no fixed requirement for such radius. It is represented that John Hancock's regional forest managers take into account the distance of a potential buyer from the location of the properties under management and determine what is the appropriate target area.

It is further represented that Buyer's Lists typically contain between 50 and 100 potential buyers. However, the number may vary from list to list depending upon the depth of the timber markets and the number of wood processing facilities in the relevant geographic area. It is in the interest of John Hancock, and all of its client accounts, to maintain the most comprehensive Buyer's Lists for all transactions. In this regard, prospective buyers are identified via word of mouth through day to day dealing with logging contractors and timber buyers by John Hancock's regional forest managers. In addition, prospective buyers may be added to a particular Buyer's List upon the request, either oral or written, of such buyers. It is represented that John Hancock's regional forest managers will add a potential buyer to the Buyer's List, so long as a manager has no knowledge of unsatisfactory past performance by such buyer. The applicants have informed the Department that John Hancock's general account and the names of other accounts managed by John Hancock may appear on any of the Buyer's Lists. In this regard, the Department notes that section II(h) of this exemption precludes relief for the purchase by ForesTree IP of Timber Assets from or sale by ForesTree IP of Timber Products to Hancock's general account or any other account managed by Hancock.

With respect to the Buyer's List utilized by ForesTree IP, John Hancock's forest manager in the region where such Timber Products are located will solicit bids from all of the buyers in that geographic area whose names are on the Buyer's List then currently in effect. It is represented that John Hancock will not modify the Buyer's List for a geographical area to add International Paper's name to such list solely for the purpose of engaging in a sale by ForesTree IP of Timber Products in such area to International Paper. Further, with respect to the Buyer's List utilized by ForesTree IP, John Hancock's regional forest managers will not remove a buyer from the Buyer's List for a geographic area, unless the buyer has failed to perform satisfactorily in a previous transaction; is no longer in business; requests, orally or in writing, to be removed from such list; or has failed to respond for a period of two (2) years to previous solicitations by ForesTree IP to bid on Timber Products offered for sale in the geographic area.

Prior to sending out a solicitation for bids on Timber Products, John Hancock will establish a Minimum Bid based on its assessment of the fair market value of the Timber Products being sold. It is represented that John Hancock manages Timber Assets through individuals in its regional offices (the Hancock Forester(s)). The Hancock Foresters contract for management of Timber Assets in specific regions with affiliates or with third party forest managers (the Contract Forest Managers). Each of the Contract Forest Managers are represented by a timberland manager (the Timberland Managers). Individual field foresters (the Field Forester(s)) report to the Timberland Managers.

It is represented that Field Foresters are responsible for day-to-day management of ForesTree IP. Such Field Foresters determine when, consistent with annual budgets established by the Hancock Foresters, to sell specific Timber Products. Each time a Timber Product is sold using the bid solicitation process, a Field Forester determines the current fair market value of such

product. It is further represented that the Minimum Bid is equal to the current fair market value of such product.

It is represented that to determine the fair market value (and consequently, the Minimum Bid) for a solicitation, a Field Forester reviews: (1) Information about recent sales of Timber Products in the area, gleaned from conversations with mill owners and other timber buyers on a regular basis, (2) information on sales of standing timber and so-called ''gatewood'' (harvested timber delivered directly to the gate of a mill), and (3) routine disclosures of actual recent winning and low bids received for Timber Products.

Once a Field Forester determines the fair market value for the Timber Product to be sold, the price is compared to the ''per unit annual budgeted price'' for the applicable Timber Product. It is represented that every year a budget for each Timber Asset is adopted. Among other things, the budget includes a projection of the average sales price for specific types of Timber Products to be sold during the year. If the Minimum Bid proposed by a Field Forester for a Timber Product is more than 10 percent (10%) below the budgeted price, a Hancock Forester must review the solicitation. It is the responsibility such Hancock Forester to then determine whether the price difference is justified by changes in circumstances, and whether or not to approve the proposed Minimum Bid. Rather than approve the proposed Minimum Bid, a Hancock Forester may insist that the sale of the Timber Product be delayed.

The applicants indicate that is not customary at John Hancock or in the timber industry in which it operates to disclose the Minimum Bid in advance for a timber sale in a competitive bid situation. Minimum Bids are not disclosed because that disclosure could adversely affect the price received by the seller. The Minimum Bid is published with final bid results.

It is represented that the highest bid must meet or exceed the Minimum Bid and must be at least as favorable to ForesTree IP as the fair market value of the Timber Product being sold at the time that the contract for sale is legally binding on the parties involved. Where International Paper is the highest bidder for a Timber Product being sold by ForesTree IP, it is represented that the sale will not go forward, unless Hancock has received bids on such Timber Product from at least two (2) other bidders, in addition to International Paper, provided that each such bidder satisfies the definition of a bona fide bidder, as set forth in section III (i), below; and that neither Hancock's general account nor any other account managed by Hancock is either of the two other bidders.

9. It is represented that the proposed transactions are administratively feasible, because each transaction involving the IP Retirement Plan can be readily identified and audited. Furthermore, the exemption will not require continued monitoring or other involvement on behalf of the Department or the Internal Revenue Service. Furthermore, John Hancock or an affiliate is responsible for maintaining or causing to be maintained certain records for a period of six (6) years from the date of any transaction covered by this exemption which will enable certain persons to determine whether the conditions of the exemption have been met.

10. In summary, the applicants represent that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The price paid by ForesTree IP for the Timber Assets will be determined, as of the date of each transaction, by an independent, qualified appraiser; and will be documented in writing by an appraisal report;

(b) The price paid by ForesTree IP for the Timber Assets will not exceed the fair market value of such assets at the time of the purchase;

(c) Prior to soliciting bids for the sale of a Timber Product, John Hancock will establish a Minimum Bid based on its assessment of the fair market value of the Timber Product offered for sale;

(d) John Hancock (or its designee) will solicit from each party on the Buyer's List utilized by ForesTree IP for the relevant geographic area in which the Timber Product is located, a written bid for the purchase of the Timber Product offered for sale;

(e) The highest price bid for the Timber Product offered for sale must meet or exceed the Minimum Bid established by John Hancock and must not be less than the fair market value of such Timber Product at the time the contract for sale is legally binding on the parties involved;

(f) Where International Paper's is the highest price bidder for the Timber Product offered for sale, the transaction may not go forward, unless bids have been received on such Timber Product from at least two (2) other bidders, in addition to International Paper, provided that each such bidder satisfies the definition of a *bona fide* bidder, as set forth in section III (i), below; and provided further that neither Hancock's general account nor any other account managed by Hancock is either of the two other bidders;

(g) any plan that invests in ForesTree IP will have total assets in excess of $100 million;

(h) John Hancock or an affiliate will act as discretionary investment manager for ForesTree IP;

(i) John Hancock or an affiliate will negotiate on behalf of ForesTree IP the terms and conditions of the purchase of Timber Assets or the sale of Timber Products by ForesTree IP;

(j) prior to entering into the purchase of Timber Assets or the sale of Timber Products by ForesTree IP, John Hancock or an affiliate will determine on behalf of such account that each such transaction is feasible, in the interest of the account based on the investment policy and objectives of such account, and protective of the participants in such account;

(k) The terms and conditions of each transaction involving the purchase of Timber Assets or the sale of Timber Products by ForestTree IP are at least as favorable to such account as those obtainable in an arm's length transaction with an unrelated party;

(l) The transactions which are the subject of this exemption are not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(m) ForesTree IP will not purchase Timber Assets from or sell Timber Products to Hancock's general account or any other account managed by Hancock;

(n) The investment of plan assets by any IP Plan in ForesTree IP will not exceed 20 percent (20%) of the total assets of such plan;

(o) The total amount invested by International Paper on behalf of the IP Plans and allocated to ForesTree IP will not in the aggregate exceed $100 million; and

(p) John Hancock or its affiliates shall maintain or cause to be maintained certain records for a period of six (6) years from the date of any transaction covered by this exemption.

Notice to Interested Persons

It is represented that those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include International Paper, State Street Bank, and the active participants in the IP Retirement Plan.

John Hancock proposes to provide notification of the publication of the Notice to these interested persons through different methods. In this regard, John Hancock will provide notification to International Paper and

State Street by first class mail or by overnight delivery within fifteen (15) calendar days of the date of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR § 2570.43(b)(2), which will advise such interested persons of their right, to comment on the proposed exemption.

With regard to notification to the active participants in the IP Retirement Plan, John Hancock proposes: (1) To ask International Paper to distribute the required notification pursuant to its usual and customary procedures for dissemination of information to employees; and (2) to direct that notification be posted within twenty-one (21) calendar days of the date of publication of the Notice in the **Federal Register**. Such postings will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR § 2570.43(b)(2), which will advise interested persons of their right to comment. International Paper has agreed to post the required notification on bulletin boards in prominent areas at those International Paper work sites at which more than ten (10) participants of the IP Retirement Plan work. Further, it is represented that International Paper will also provide written confirmation to the Department that it posted the required notification at the various work sites on a specified date.

The Department must receive all written comments and requests for a hearing no later than thirty (30) days from the *later of:* (1) The date when posting of a copy of the Notice and a copy the Supplemental Statement was completed at all those International Paper work sites at which more than ten (10) participants in the IP Retirement Plan work; or (2) the date a copy of the Notice and a copy of the Supplemental Statement was received in the mail or by overnight delivery by State Street.

FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540 (This is not a toll-free number.)

G.D. Castillo, M.D., Ltd, Profit Sharing Plan (the Plan), Located in Savoy, IL

[Application No. D–11107]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 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). If the proposed exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective August 23, 1999, to the sale of two parcels of unimproved real property (the Properties) by the Plan to Doctor G.D. Castillo (the Sales), a party in interest with respect to such Plan, provided that the following conditions are met: [6]

(a) The terms and conditions of the Sales were at least as favorable to the Plan as those obtainable in similar arm's-length transactions involving unrelated parties;

(b) Each Sale was a one-time transaction for cash;

(c) The amount of cash received by the Plan for each Property was not less than the fair market value of such Property as of the date of the Sales as determined by a qualified, independent appraiser; and

(d) The Plan did not pay any fees or commissions in connection with the Sales.

EFFECTIVE DATE: August 23, 1999.

Summary of Facts and Representations

1. Doctor G.D. Castillo (Dr. Castillo), a physician specializing in plastic surgery, is the sole owner of G.D. Castillo, M.D., Ltd., a medical office located in Savoy, Illinois. G.D. Castillo, M.D., Ltd. is the sponsor of the Plan, a profit sharing plan having three participants and approximately $2,667,475 in assets as of December 31, 1999. On the date of the Sales, the assets of the Plan were invested primarily in the Properties, stock, and other non-cash assets.

2. The assets of the Plan are invested according to the sole discretion of Dr. Castillo. In 1995 and 1996, Dr. Castillo directed the Plan to acquire the Properties from unrelated third parties (the Acquisitions). The first of the Properties is located at 1804A Woodfield Drive, Savoy, Illinois (the First Property) and is described as a commercial lot comprising approximately 17,178 square feet. Dr. Castillo directed the Plan to acquire this property for $72,000 in 1995. The second of the Properties is located at Lot 50, J.L. Smith Lane, Monee, Illinois (the Second Property) and is described as an air park subdivision lot comprising approximately 43,200 square feet. Dr. Castillo directed the Plan to acquire this property for $39,845 in 1996.

3. Subsequent to the Acquisitions, Dr. Castillo decided that the Properties were no longer appropriate investments for the Plan. In this regard, by 1999, Dr. Castillo determined that the Properties, while incurring certain costs to the Plan, were not appreciating as expected.[7] As a result, Dr. Castillo directed the Plan to sell the Properties on the open market.

4. Concurrent with the offering of the Properties on the open market, Dr. Castillo identified a new investment opportunity for the Plan. In this regard, Dr. Castillo sought to acquire a certain improved real property located in Golden, Colorado (the New Property) on behalf of the Plan. Given that the Plan lacked sufficient liquid assets to acquire the New Property, Dr. Castillo initiated the Sales. In this regard, on August 23, 1999, the Plan sold the First Property and the Second Property to Dr. Castillo for $70,000 and $42,000, respectively. Dr. Castillo represents that both transactions were for cash and that the Plan was not charged any costs or fees arising in connection with the Sales.[8] Thereafter, an accountant reviewed the Sales when preparing an Internal Revenue Service Form 5500 on behalf of the Plan with respect to the 1999 Plan year. Upon being notified that the Sales constituted a prohibited transaction, Dr. Castillo voluntarily filed this application for an exemption on January 15, 2001.

5. Dr. Castillo states that the amount of cash the Plan received for the Properties pursuant to the Sales equaled the fair market value of the Properties as of the date of the Sales. In this regard, Dr. Castillo states that the Properties were appraised by Mr. Carl Hill (Mr. Hill), a real estate appraiser with over 22 years of specialized experience in valuing commercial properties. In appraising these Properties, Mr. Hill used the sales comparison approach and determined that the fair market value of the First Property was $70,000 as of March 15, 1999 and the fair market value of the Second Property was $42,000 as of March 15, 1999.

[6] The application for this proposed exemption, which was filed on January 19, 2001, was initially assigned the number D–10967 before being reassigned the above-referenced application number on July 22, 2002.

[7] The applicant represents that at the time of the Sales, these costs (i.e., taxes, association dues, and maintenance) totaled $1,297.

[8] Using the cash received from the Sales, the applicant states that the Plan acquired the New Property on August 27, 1999 from an unrelated third party for approximately $690,000. Dr. Castillo states further that he has been unsuccessful in his attempts to resell the Properties on the open market.

6. Dr. Castillo states that the participation by the Plan in the Sales benefited the participants and beneficiaries of the Plan. In this regard, Dr. Castillo states that the cash received by the Plan from the Sales enabled the Plan to acquire the New Property. In so doing, the Plan acquired an asset that Dr. Castillo anticipates will provide a suitable rate of return to the Plan.

7. Dr. Castillo represents that the Sales were protective of the participants and beneficiaries of the Plan since the terms of the Sales were no less favorable to the Plan than the terms available between unrelated parties. In this regard, the Plan received the current fair market value of the Properties without incurring any of the costs or fees associated therein. In addition, Dr. Castillo states that the Sale was in the best interests of the Plan since it enabled the Plan to sell a non-appreciating asset that had limited marketability. Finally, Dr. Castillo states that the proposed exemption is administratively feasible in that the Sales involved one-time transactions for cash.

8. In summary, Dr. Castillo represents that the Sales satisfy the criteria of section 408(a) of the Act since:

(a) The terms and conditions of the Sales were at least as favorable to the Plan as those obtainable in similar arm's-length transactions involving unrelated parties;

(b) Each Sale was a one-time transaction for cash;

(c) The amount of cash received by the Plan for each Property equaled the fair market value of such Property as of the date of the Sales as determined by a qualified, independent appraiser; and

(d) The Plan did not pay any fees or commissions in connection with the Sales.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

DuPont Capital Management Corporation (DCMC), Located in Wilmington, DE

[Application Nos. D–11111, 11112, 11113]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 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). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the DuPont Pension and Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan and the Protein Technologies International Retirement Plan (collectively, the Plans)[9] to the Dow Chemical Company (Dow), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by Dow, for the period from October 25, 2000 until July 10, 2001 provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by a reputable, independent, third party market source;

(c) The Bonds were sold on July 10, 2001 for $1,975,320 at a profit of $126,580 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Dow or any other party in interest with respect to the Plans; and

(e) The transaction represented less than .02% of each Plan's total assets.

Effective Date of Exemption

The proposed exemption, if granted, will be effective for the period from October 25, 2000 (the date of the acquisition of the Bonds by the Plans) until July 10, 2001 (the date the Bonds were sold).

Summary of Facts and Representations

1. The applicant is DuPont Capital Management Corporation (DCMC), a wholly owned subsidiary of E.I. dupont de Nemours and company (DuPont), and organized as a Delaware corporation with its principal office in Wilmington, Delaware. As of December 31, 2001, DCMC had total assets under its management with an aggregate market value of approximately $19.3 billion. DCMC is an investment advisor, registered under the Investment Advisers Act of 1940, for the assets of the DuPont Pension Trust Fund (the Trust), which holds the assets of the Plans. DCMC has managed the assets of the Trust since July 1997. The aggregate fair market value of the Trust's assets is in excess of $13 billion.

2. DuPont is the plan sponsor of the DuPont Pension and Retirement Plan. The applicant estimates that there are currently 156,677 participants and beneficiaries in the DuPont Pension and Retirement Plan. Pioneer Hi-Bred International Inc. and Protein Technologies International, each of which is a subsidiary of DuPont, are the plan sponsors of the Pioneer Hi-Bred International Inc. Retirement Plan and the Protein Technologies International Retirement Plan, respectively. The applicant represents that there are currently 5,000 participants and beneficiaries in the Pioneer Hi-Bred International, Inc. Retirement Plan, and 734 participants and beneficiaries in the Protein Technologies International Retirement Plan.

3. The applicant represents that DCMC provides investment management services to various employee benefit plans, including plans sponsored by DuPont and its subsidiaries (i.e., Pioneer Hi-Bred International, Inc. and Protein Technologies International) and affiliates (collectively, the DuPont Group), with respect to a spectrum of investments consisting primarily of domestic and international equities, fixed-income securities, and various alternative investments (including real estate, venture capital, and commodity futures). DCMC utilizes value-based investment strategies with the objective of achieving maximum return consistent with levels of risk suitable to each Plan.

4. DuPont and Dow participate in a 50/50 joint venture known as DuPont Dow Elastomers LLC (DDE), as a result of which Dow is a party in interest with respect to the Plans. In this regard, Dow is a party in interest with respect to the Plans under section 3(14)(I) of the Act because it is a 10% or more joint venturer of DDE. DDE is a party in interest with respect to the DuPont Pension and Retirement Plan under section 3(14)(G) of the Act, as an entity 50% owned by DuPont (which is a party in interest with respect to such Plan under section 3(14)(C) of the Act). DDE is a party in interest with respect to the Pioneer Hi-Bred International, Inc. Retirement Plan and the Protein Technologies International Retirement Plan under section 3(14)(G) of the Act, as an entity 50% owned by DuPont which is a party in interest with respect to such Plans under section 3(14)(E) of the Act. The annual sales of DDE represent less than 2% of DuPont's total annual sales.

5. According to the applicant, as a result of the inadvertent failure to

[9] Because the Plans are funded through the same trust and each has an undivided interest in the assets of such trust, this application will treat the purchase of the Bonds (as defined herein) by the Plans as a single transaction and information concerning such purchase will be discussed on an aggregate basis.

identify Dow as a party in interest with respect to the Plans,[10] DCMC purchased on October 25, 2000, on behalf of the Plans, certain corporate debt securities issued by Dow (*i.e.*, the Bonds). The decision to purchase the Bonds was made by employees of DCMC who specialize in purchases of corporate debt securities. The principal amount of the Bonds purchased by the Plans was $2,000,000. The Bonds were purchased in a principal transaction by the Plans from UBS Warburg, an entity unrelated to the Plans. The Bonds were sold in a subsequent principal transaction by the Plans to Lehman Brothers, an entity unrelated to the Plans. The Bonds were purchased on October 25, 2000 for $1,975,320 (including accrued but unpaid interest) and were sold on July 10, 2001 for $2,101,900 (including accrued but unpaid interest).

6. It is represented that Dow issued a total of $1 billion of the Bonds. Accordingly, the Plans purchased 0.2% of the total Bond issue. The coupon rate on the Bonds was 7⅜% per annum. The Bonds had a credit rating of A/A1 by Standard and Poor's Rating Services and Moody's Investor Service, Inc., respectively, at the time of the Plans' purchase. The applicant represents that the expected duration of the Bonds was approximately 11.9 years. The Bonds were debentures with interest payable semi-annually and principal payable at maturity. The Bonds represented a de minimus percentage of each Plan's total assets. In the aggregate the Bonds represented less than .02% of the Trust's total assets at the time of the acquisition.

7. The applicant states that the transaction was in the interests of the Plans' participants and beneficiaries since the acquisition and sale of the Bonds resulted in a profit totaling $126,580. Moreover, the applicant represents that the purchase of the Bonds was equitable to the Plans since the Plans paid no more than the current fair market value for the Bonds at the time of the acquisition. In this regard, it is represented that in providing the acquisition price of the Bonds to DCMC, the DCMC trader responsible for the purchase of the Bonds utilized pricing mechanisms commonly employed in the over-the-counter fixed income markets. Specifically, the purchase price was determined in consideration of competitive offers from multiple dealers.[11]

The applicant represents that upon identifying the extension of credit as a prohibited transaction, DCMC acted promptly to deal with the problem by filing for a retroactive exemption with the Department. In addition, the applicant has established new internal compliance procedures for considering any new purchases of debt instruments for client pension plans in order to avoid future prohibited transactions under the Act. According to the applicant, special lists must now be maintained for each Plan of all joint ventures of DuPont or a subsidiary where DuPont owns (directly or indirectly) at least 50% of the joint venture and another joint venturer owns at least 10% of the joint venture. Pursuant to compliance procedures, the applicant's bond trading personnel must check these lists prior to any new purchases of such bonds for the Plans. The lists must be updated monthly.

8. In summary, the applicant represents that the proposed exemption will satisfy the criteria of section 408(a) of the Act because:

(a) The purchase of the Bonds by the Plans was a one-time cash transaction;

(b) The Plans purchased the Bonds at their current fair market value from an unrelated party, based on prices determined by a reputable, independent third party market source;

(c) The purchase of the Bonds was not part of an arrangement, agreement, or understanding designed to benefit Dow or any other party in interest with respect to the Plans;

(d) The purchase and sale of the Bonds resulted in the Plan's receipt of a profit totaling $126,580; and

(e) The applicant has established new internal compliance procedures to avoid future prohibited transactions under the Act for acquisition of bonds by the Plans.

[10] In this proposed exemption, the Department is providing no opinion as to whether the Plans' acquisition and holding of the Bonds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act other than section 406(a). In this regard, the applicant has not requested, nor is the Department providing, any relief from section 406(b) of the Act in connection with the subject transactions. The Department notes that section 406(b) of the Act provides, in pertinent part, that a fiduciary of a plan shall not deal with the assets of the plan in his own interest or for his own account, nor act on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. In addition, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

[11] Pricing sources for the acquisition of the Bonds were electronic sources on trader desks. Information concerning dealer quotes is updated via computer monitors available to each of the primary security dealers. These sources include, but are not limited to, Bloomberg, Telerate, Reuters, Salomon Yield Book and Lehman Brothers PC Product in addition to daily flow and pricing indications received directly from 10–15 broker/dealers.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski of the Department at (202) 693–8545. (This is not a toll-free number).

DuPont Capital Management Corporation (DCMC), Located in Wilmington, DE

[Application Nos. D–11114, 11115, 11116, 11117, 11118]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 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). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the DuPont Pension and Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan, the Protein Technologies International Retirement Plan and the DuPont Savings and Investment Plan (collectively, the Plans)[12] to ConAgra Foods, Inc. (ConAgra), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by ConAgra, for the period from September 5, 2001 until October 17, 2001, provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by reputable, independent, third party market sources;

(c) The Bonds were sold on October 17, 2001 for $4,234,531 at a profit of $185,638 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit ConAgra or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

Effective Date of Exemption

The proposed exemption, if granted, will be effective for the period from

[12] Because the Plans are funded through the same trust and each has an undivided interest in the assets of such trust, this application will treat the purchase of the Bonds (as defined herein) by the Plans as a single transaction and information concerning such purchase will be discussed on an aggregate basis.

September 5, 2001 (the date of the acquisition of the Bonds by the Plans) until October 17, 2001 (the date the Bonds were sold).

Summary of Facts and Representations

1. The applicant is DuPont Capital Management Corporation (DCMC), a wholly owned subsidiary of E.I. duPont de Nemours and Company (DuPont), and organized as a Delaware corporation with its principal office in Wilmington, Delaware. As of December 31, 2001, DCMC had total assets under its management with an aggregate market value of approximately $19.3 billion. DCMC is an investment advisor, registered under the Investment Advisers Act of 1940, for the assets of the DuPont Pension Trust Fund (the Trust), which holds the assets of the Plans. DCMC has managed the assets of the Trust since July 1997. The aggregate fair market value of the Trust's assets is in excess of $13 billion.

2. DuPont is the plan sponsor of the DuPont Pension and Retirement Plan and the DuPont Savings and Investment Plan. The applicant estimates that there are currently 156,677 participants and beneficiaries in the DuPont Pension and Retirement Plan and 84,562 in the DuPont Savings and Investment Plan. Pioneer Hi-Bred International Inc. and Protein Technologies International, each of which is a subsidiary of DuPont, are the plan sponsors of the Pioneer Hi-Bred International Inc. Retirement Plan and the Protein Technologies International Retirement Plan, respectively. The applicant represents that there are currently 5,000 participants and beneficiaries in the Pioneer Hi-Bred International, Inc. Retirement Plan, and 734 participants and beneficiaries in the Protein Technologies International Retirement Plan.

3. The applicant represents that DCMC provides investment management services to various employee benefit plans, including plans sponsored by DuPont and its subsidiaries (*i.e.*, Pioneer Hi-Bred International, Inc. and Protein Technologies International) and affiliates (collectively, the DuPont Group), with respect to a spectrum of investments consisting primarily of domestic and international equities, fixed-income securities, and various alternative investments (including real estate, venture capital, and commodity futures). DCMC utilizes value-based investment strategies with the objective of achieving maximum return consistent with levels of risk suitable to each Plan.

4. DuPont and ConAgra participate in a 50/50 joint venture known as Ecological Chemical Products (Ecochem), as a result of which ConAgra is a party in interest with respect to the Plans. In this regard, ConAgra is a party in interest with respect to the Plans under section 3(14)(I) of the Act because it is a 10% or more joint venturer of Ecochem. Ecochem is a party in interest with respect to the DuPont Pension and Retirement Plan and the DuPont Savings and Investment Plan under section 3(14)(G) of the Act, as an entity 50% owned by DuPont (which is a party in interest with respect to such Plan under section 3(14)(C) of the Act). Ecochem is a party in interest with respect to each of DuPont Dow Elastomers Pension and Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan and the Protein Technologies International Retirement Plan under section 3(14)(G) of the Act, as an entity 50% owned by DuPont which is a party in interest with respect to such Plans under section 3(14)(E) of the Act. According to the applicant, the value of DuPont's interest in Ecochem represents less than 1% of DuPont's total net value.

5. According to the applicant, as a result of the inadvertent failure to identify ConAgra as a party in interest with respect to the Plans,[13] DCMC purchased on September 5, 2001, on behalf of the Plans, certain corporate debt securities issued by ConAgra (*i.e.*, the Bonds). The decision to purchase the Bonds was made by employees of DCMC who specialize in purchases of corporate debt securities. The principal amount of the Bonds purchased by the Plans was $4,051,000. The Bonds were purchased in a principal transaction by the Plans from Merrill Lynch, an entity unrelated to the Plans, as part of a new issuance of the Bonds by the issuer, ConAgra. The Bonds were sold in a subsequent principal transaction by the Plans to UBS Warburg, an entity unrelated to the Plans. The Bonds were purchased by the Plans on September 5, 2001 for $4,048,893 (including accrued but unpaid interest) and were sold on October 17, 2001 for $4,234,531 by the Plans (including accrued but unpaid interest).

6. It is represented that ConAgra issued a total of $1 billion of the Bonds. Accordingly, the Pension Plans and Savings Plan purchased 0.41% of the total Bond issue. The coupon rate on the Bonds was 6.75% per annum. The Bonds had a credit rating of BBB+/Baa1 by Standard and Poor's Rating Services and Moody's Investor Service, Inc., respectively, at the time of the Plans' purchase. No change in such rating occurred while the Bonds were held by the Plans. The applicant represents that the expected duration of the Bonds was approximately 6.7 years. The Bonds paid interest semi-annually, with the total principal amount payable at maturity. The Bonds also had certain special features that allowed them to be called (*i.e.*, redeemed) by the issuer, at certain times. The Bonds represented a de minimus percentage of each Plan's total assets. In the aggregate the Bonds represented less than 1% of the Trust's total assets at the time of the acquisition.

7. The applicant states that the transaction was in the interests of the Plans' participants and beneficiaries since the acquisition and sale of the Bonds resulted in a profit totaling $185,638. Moreover, the applicant represents that the purchase of the Bonds was equitable to the Plans since the Plans paid no more than the current fair market value for the Bonds at the time of the acquisition. In this regard, the Bonds were purchased by the Plans at the same price that was paid by all other investors at the time of issuance by ConAgra. Thus, the DCMC trader responsible for the purchase of the Bonds relied on the pricing mechanisms that were used by Merrill Lynch and the other underwriters in determining the price of the Bonds at the time of issuance. DCMC represents that the pricing mechanisms for the Bonds were those commonly employed in the over-the-counter fixed-income markets.

The applicant represents that upon identifying the extension of credit as a prohibited transaction, DCMC acted promptly to deal with the problem by filing for a retroactive exemption with the Department. In addition, the applicant has established new internal compliance procedures for considering any new purchases of debt instruments for client pension plans in order to avoid future prohibited transactions under the Act. According to the applicant, special lists must now be maintained for each Plan of all joint ventures of DuPont or a subsidiary

[13] In this proposed exemption, the Department is providing no opinion as to whether the Plans' acquisition and holding of the Bonds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act other than section 406(a). In this regard, the applicant has not requested, nor is the Department providing, any relief from section 406(b) of the Act in connection with the subject transactions. The Department notes that section 406(b) of the Act provides, in pertinent part, that a fiduciary of a plan shall not deal with the assets of the plan in his own interest or for his own account, nor act on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. In addition, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

where DuPont owns (directly or indirectly) at least 50% of the joint venture and another joint venturer owns at least 10% of the joint venture. Pursuant to compliance procedures, the applicants bond trading personnel must check these lists prior to any new purchases of such bonds for the Plans. The lists must be updated monthly.

8. In summary, the applicant represents that the proposed exemption will satisfy the criteria of section 408(a) of the Act because:

(a) The purchase of the Bonds by the Plans was a one-time cash transaction;

(b) The Plans' purchased the Bonds at their current fair market value from an unrelated party, based on prices determined by a reputable, independent third party market sources;

(c) The Bonds were sold by the Plans on October 17, 2001 for $4,234,531 at a profit of $185,638 for the Plans, and;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit ConAgra or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski of the Department at (202) 693–8545. (This is not a toll-free number).

DuPont Capital Management Corporation (DCMC), Located in Wilmington, DE

[Application Nos. D–11119, 11120]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and 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). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the CONSOL Inc. Employee Retirement Plan and the CONSOL Inc. Investment Plan for Salaried Plans (collectively, the Plans) to Conoco Inc. (Conoco), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by Conoco, for the period from December 29, 1999 through August 16, 2001, provided the following conditions were satisfied:

(a) The purchase of the Bonds by the Plans was a one-time transaction for cash;

(b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by reputable, independent, third party market sources;

(c) The Bonds were sold on August 16, 2001 for $816,641 at a profit of $61,858 for the Plans;

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Conoco or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

Effective Date of Exemption

The proposed exemption, if granted, will be effective for the period from December 29, 1999 (the date of the acquisition of the Bonds by the Plans) until August 16, 2001 (the date the Bonds were sold).

Summary of Facts and Representations

1. The applicant is DuPont Capital Management Corporation (DCMC), a wholly owned subsidiary of E.I. duPont de Nemours and Company (DuPont), and organized as a Delaware corporation with its principal office in Wilmington, Delaware. As of December 31, 2001, DCMC had total assets under its management with an aggregate market value of approximately $19.3 billion. DCMC is an investment advisor, registered under the Investment Advisers Act of 1940, for the assets of the DuPont Pension Trust Fund (the Trust), which holds the assets of the Plans. DCMC has managed the assets of the Trust since July 1997. The aggregate fair market value of the Trust's assets is in excess of $13 billion.

2. CONSOL Energy Inc., is the plan sponsor of the CONSOL Inc. Employee Retirement Plan and the CONSOL Inc. Investment Plan for Salaried Employees. The applicant represents that there are currently 7,049 participants and beneficiaries in the CONSOL Inc. Employee Retirement Plan, and 7,509 participants and beneficiaries in the CONSOL Inc. Investment Plan for Salaried Employees.

3. The applicant represents that DCMC provides investment management services to various employee benefit plans, including plans sponsored by DuPont and its subsidiaries [(*i.e.*, Pioneer Hi-Bred International, Inc. and Protein Technologies International) and affiliates (collectively, the DuPont Group)], with respect to a spectrum of investments consisting primarily of domestic and international equities, fixed-income securities, and various alternative investments (including real estate, venture capital, and commodity futures). DCMC utilizes value-based investment strategies with the objective of achieving maximum return consistent with levels of risk suitable to each Plan.

CONSOL, Inc. (CONSOL) was a member of the DuPont Group prior to November 5, 1998. At that time, the Trust held assets of the Plans. On November 5, 1998, DuPont divested substantially all of its holdings in CONSOL. Thus, DCMC is no longer an affiliate of the employer maintaining the Plans. However, DCMC continues to manage the assets of the Plans.[14]

4. CONSOL Energy Inc. and Conoco participate in two 50/50 joint ventures known as the Cardinal States Gathering Partnership and the Pocahontas Gas Partnership as a result of which Conoco is a party in interest with respect to the Plans. In this regard, each of the joint ventures is a party in interest with respect to the Plans under section 3(14)(G) of the Act, as an entity 50% owned by CONSOL (which is a party in interest with respect to such Plan under section 3(14)(C) of the Act). Conoco is a party in interest with respect to the Plans under section 3(14)(I) because it is a 10% or more joint venturer of each of the joint ventures. According to the applicant, Conoco is a Fortune 500 company and CONSOL had sales in excess of $2 billion for the year 2000. Additionally, the value of CONSOL's aggregate interest in the joint ventures represents less than 1% of CONSOL's total net value.

5. According to the applicant, as a result of the inadvertent failure to identify Conoco as a party in interest with respect to the Plans,[15] DCMC

[14] See Prohibited Transaction (PTE) 2001–05, 66 FR 7789 (January 25, 2001), which provides relief for transactions between parties in interest and certain former DuPont related employee benefit plans whose assets are managed by DCMC. In this regard, PTE 2001–05 was not effective at the time of the subject transactions to which this proposed exemption relates.

[15] In this proposed exemption, the Department is providing no opinion as to whether the Plans' acquisition and holding of the Bonds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act other than section 406(a). In this regard, the applicant has not requested, nor is the Department providing, any relief from section 406(b) of the Act in connection with the subject transactions. The Department notes that section 406(b) of the Act provides, in pertinent part, that a fiduciary of a plan shall not deal with the assets of the plan in his own interest or for his own account, nor act on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. In addition, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the

purchased on December 29, 1999, on behalf of the Plans, certain corporate debt securities issued by Conoco (*i.e.*, the Bonds). The decision to purchase the Bonds was made by employees of DCMC who specialize in purchases of corporate debt securities. The principal amount of the Bonds purchased by the Plans was $820,000. The Bonds were purchased in a principal transaction by the Plans from Prudential Bache, an entity unrelated to the Plans. The Bonds were sold in a subsequent principal transaction by the Plans to ABN AMRO, an entity unrelated to the Plans. The Bonds were purchased by the Plans on December 29, 1999 for $754,783 (including accrued but unpaid interest) and were sold on August 16, 2001 for $816,641 by the Plans (including accrued but unpaid interest).

6. It is represented that Conoco issued a total of $1.9 billion of the Bonds. Accordingly, the Plans purchased 0.043% of the total Bond issue. The coupon rate on the Bonds was 6.95% per annum. The Bonds had a credit rating of BBB+/Baa1 by Standard and Poor's Rating Services and Moody's Investor Service, Inc., respectively, at the time of the Plans' purchase. No change in such rating occurred while the Bonds were held by the Plans. The applicant represents that the expected duration of the Bonds was approximately 11.5 years. The Bonds paid interest semi-annually, with the total principal amount payable at maturity. The Bonds also had certain special features that allowed them to be called (*i.e.*, redeemed) by the issuer, at certain times. The Bonds represented a de minimus percentage of each Plan's total assets. In the aggregate, the Bonds represented less than 1% of the Trust's total assets at the time of the acquisition.

7. The applicant states that the transaction was in the interests of the Plans' participants and beneficiaries since the acquisition and sale of the Bonds resulted in a profit totaling $61,858. Moreover, the applicant represents that the purchase of the Bonds was equitable to the Plans since the Plans paid no more than the current fair market value for the Bonds at the time of the acquisition. In this regard, it is represented that in providing the acquisition price of the Bonds to DCMC, the DCMC trader responsible for the purchase of the Bonds utilized pricing mechanisms commonly employed in the over-the-counter fixed-income markets. Specifically, the purchase price was determined in consideration of competitive offers from multiple dealers.[16]

The applicant represents that upon identifying the extension of credit as a prohibited transaction, DCMC acted promptly to deal with the problem by filing for a retroactive exemption from the Department. In addition, the applicant has established new internal compliance procedures for considering any new purchases of debt instruments for client pension plans in order to avoid future prohibited transactions under the Act.[17] According to the applicant, special lists must now be maintained for each Plan of all joint ventures where CONSOL owns (directly or indirectly) at least 50% of the joint venture and another joint venturer owns at least 10% of the joint venture. Pursuant to compliance procedures, the applicant's bond trading personnel must check these lists prior to any new purchases of such bonds for the Plans. The lists must be updated monthly.

8. In summary, the applicant represents that the proposed exemption will satisfy the criteria of section 408(a) of the Act because:

(a) The purchase of the Bonds by the Plans was a one-time cash transaction;

(b) The Plans' purchased the Bonds at their current fair market value from an unrelated party, based on prices determined by reputable, independent third party market sources;

(c) The Bonds were sold by the Plans on August 16, 2001 for $816,641 at a profit of $61,858 for the Plans; and

(d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit Conoco or any other party in interest with respect to the Plans; and

(e) The transaction represented less than 1% of each Plan's total assets.

FOR FURTHER INFORMATION CONTACT: Brian Buyniski of the Department at (202) 693–8545. (This is not a toll-free number).

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 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or 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; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 16th day of January, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 03–1354 Filed 1–21–03; 8:45 am]

BILLING CODE 4510–29–P

exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

[16] Pricing sources for the acquisition of the Bonds were electronic sources on trader desks. Information concerning dealer quotes is updated via computer monitors available to each of the primary security dealers. These sources include, but are not limited to, Bloomberg, Telerate, Reuters, Salomon Yield Book and Lehman Brothers PC Product in addition to daily flow and pricing indications received directly from 10–15 broker/dealers.

[17] The Department is providing no opinion in this proposed exemption as to whether such prohibited transactions, if entered into by the Plans, would be covered by PTE 2001–05.

NATIONAL INDIAN GAMING COMMISSION

Fee Rates

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given, pursuant to 25 CFR 514.1(a)(3), that the National Indian Gaming Commission has adopted preliminarily annual fee rates of 0.00% for tier 1 and 0.059% (.00059) for tier 2 for calendar year 2003. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation under 25 CFR part 518, the preliminary fee rate on class II revenues for calendar year 2003 shall be one-half of the annual fee rate, which is 0.0295% (.000295).

FOR FURTHER INFORMATION CONTACT: Bobby Gordon, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005; telephone 202/632–7003; fax 202/632–7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act established the National Indian Gaming Commission which is charged with, among other things, regulating gaming on Indian lands.

The regulations of the Commission (25 CFR part 514), as amended, provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the preliminary annual rate being adopted today are effective for calendar year 2003. Therefore, all gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations and report and pay any fees that are due to the Commission by March 31, 2003.

Richard B. Schiff,

Acting Chief of Staff, National Indian Gaming Commission.

[FR Doc. 03–1377 Filed 1–21–03; 8:45 am]

BILLING CODE 7565–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on February 4, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 4, 2003—1:00 p.m. Until the Conclusion of Business

The Subcommittee will review two proposed NRC documents for resolution of Generic Safety Issue–191, ''Assessment of Debris Accumulation on PWR Sump Performance''. These documents are: proposed NRC Generic Letter 2003–XX, ''Potential Impact of Debris Blockage on Emergency Recirculation During Design-Basis Accidents at Pressurized Water Reactors'', and associated draft Regulatory Guide DG–1107, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident''. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Persons desiring to make oral statements should notify the Designated Federal Official or the Cognizant Staff Engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Nuclear Energy Institute, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) or Mr. Michael R. Snodderly, Cognizant Staff Engineer (telephone: 301–415–6927) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: January 15, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–1329 Filed 1–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on February 6–8, 2003, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 20, 2002 (67 FR 70094).

Thursday, February 6, 2003

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:15 a.m.: Catawba and McGuire License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Duke Energy Corporation regarding the license renewal application for the Catawba and McGuire Nuclear Plants and the associated NRC staff's final Safety Evaluation Report.

10:30 a.m.–12 Noon: Draft Regulatory Guide DG–1107, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident'' and Draft Generic Letter 2003–xx, related to the Resolution of GSI–191, ''Assessment of Debris Accumulation on PWR Sump Performance'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding Draft Regulatory Guide DG–1107 and Draft Generic Letter 2003–xx associated with the resolution of Generic Safety Issue (GSI)–191.

1 p.m.–3 p.m.: PTS Reevaluation Project: Technical Bases for Potential Revision to PTS Screening Criterion (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff

regarding the technical bases for potential revision to the pressurized thermal shock (PTS) screening criterion.

3:15 p.m.–4:45 p.m.: Draft Final Version of Regulatory Guide DG–1077, ''Guidelines for Environmental Qualification of Microprocessor-Based Equipment Important to Safety in Nuclear Power Plants'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on the draft final version of DG–1077.

5 p.m.–7:15 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on Safety Culture.

Friday, February 7, 2003

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–8:50 a.m.: Subcommittee Report (Open)—Report by the Chairman of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment regarding the coherence plan for risk-informed regulatory activities that was discussed at the January 22, 2003 Subcommittee meeting.

8:50 a.m.–9:15 a.m.: Subcommittee Report (Open)—Report by the Chairman of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment regarding the Westinghouse AP1000 passive plant design PRA that was discussed at the January 23–24, 2003 Subcommittee meeting.

9:15 a.m.–10:15 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

10:15 a.m.–10:30 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

10:45 a.m.–12:15 p.m.: Annual ACRS Report on the NRC Safety Research Program (Open)—The Committee will discuss the draft ACRS Report on the NRC Safety Research Program.

1:15 p.m.–7 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, February 8, 2003

8:30 a.m.–1 p.m.: Proposed ACRS Reports (Open)—The Committee will continue to discuss proposed ACRS reports. In addition, the Committee will discuss a draft report prepared by an ACRS consultant on the role and use of PRA in the regulatory decisionmaking process.

1 p.m.–1:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html or http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: January 16, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–1330 Filed 1–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

DATES: Weeks of January 20, 27, February 3, 10, 17, 24, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 20, 2003

Tuesday, January 21, 2003

10 a.m.—Discussion of Security Issues (Closed—Ex. 1)

Thursday, January 23, 2003

1:55 p.m.—Affirmation Session (Public Meeting) (If needed)

2 p.m.—Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This Meeting Will Be Webcast Live at the Web Address—*http://www.nrc.gov.*

Week of January 27, 2003—Tentative

There are no meetings scheduled for the Week of January 27, 2003.

Week of February 3, 2003—Tentative

Tuesday, February 4, 2003

10 a.m.—Briefing on Status of Office of the Chief Information Officer (OCIO) Programs, Performance, and Plans (Public Meeting) (Contact: Jackie Silber, 301–415–7330)

This Meeting Will Be Webcast Live at the Web Address—*http://www.nrc.gov.*

Wednesday, February 5, 2003

1 p.m.—Discussion of Governmental Issues (Closed—Ex. 1 & 9)

Week of February 10, 2003—Tentative

Monday, February 10, 2003

10 a.m.—Briefing on Status of Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Michael Case, 301–415–1275)

This Meeting Will Be Webcast Live at the Web Address—*http://www.nrc.gov.*

Tuesday, February 11, 2003

10 a.m.—Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Patrice Williams-Johnson, 301–415–5732)

This Meeting Will Be Webcast Live at the Web Address—*http://www.nrc.gov.*

Week of February 17, 2003—Tentative

There are no meetings scheduled for the Week of February 17, 2003.

Week of February 24, 2003—Tentative

Monday, February 24, 2003

2 p.m.—Meeting with National Association of Regulatory Utility Commissioners (NARUC) (Public Meeting)

This Meeting Will Be Webcast Live at the Web Address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

By a vote of 5–0 on January 15, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Security Issues (Closed—Ex. 1)'' be held on January 21, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: January 16, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–1537 Filed 1–17–03; 2:55 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Correction to Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Consideration

On January 7, 2003, the **Federal Register** published the ''Biweekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations.'' On page 808, for GPU Nuclear Corporation and Saxton Nuclear Experimental Corporation, Table 1, last column total ''2.70e+05'' should read ''3.23e–04.''

Dated at Rockville, Maryland, this 15th day of January, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–1331 Filed 1–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Board Meeting: February 24 and 25, 2003—Las Vegas, Nevada: panels of the Nuclear Waste Technical Review Board will meet to review (1) seismic issues and (2) waste management system operations associated with a Yucca Mountain repository.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Monday, February 24, 2003, and Tuesday, February 25, 2003, panels of the Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, to review matters associated with a potential Yucca Mountain repository. The meetings are open to the public, and opportunities for public comment will be provided. The Board is charged by Congress with reviewing the technical and scientific validity of U.S. Department of Energy (DOE) activities related to managing spent nuclear fuel and high-level radioactive waste.

The Board panel meetings will be held at the Best Western Tuscany Suites and Casino, 255 East Flamingo Road, Las Vegas, NV 89109. The telephone number is (702) 947–5918; the fax number is (702) 732–2564. The meeting will start at 8 a.m. each day.

On February 24, the Board's Panel on the Repository and Panel on Site Characterization will meet jointly to discuss seismic issues. Following he call to order and introductory statements, the panel will review how probabilistic earthquake ground motions were developed by the DOE. Project ground motions developed for the Yucca Mountain Project (YMP) will be discussed. The DOE will outline the YMP approach to both preclosure design and postclosure performance analyses for seismic events. The evaluation will include very low probability site-specific seismic ground motions, plans and/or conclusions, and the significance of geological observations on limiting ground motions. The presentations will include consideration of a general approach to postclosure seismic events on the response of waste package, drip shield, and the in-drift configuration as incorporated into performance and drift stability analyses. Following the technical presentations, a round-table will specifically address: Are ground motions realistic and/or appropriate in light of their intended use? If not, what might be an alternate approach? are the approaches to seismic preclosure and postclosure issues appropriate? If not, what might be some alternate approaches? Representatives of the State of Nevada will also participate in the meeting.

On February 25, the Board's Waste Management System Panel will meet to review the DOE's plans for operating the waste management system associated with a Yucca Mountain repository. Following the call to order and introductory statements, the panel will review the DOE's plans for waste acceptable at nuclear power plants and other points of origin. The DOE will then discuss its efforts to develop a transportation plan for transporting spent fuel and high-level radioactive waste to a Yucca Mountain repository. A presentation on industry experience in transporting highly radioactive materials will be followed by

presentation giving the view of state and local governments potentially affected by transportation to the repository. The meeting will conclude with DOE presentations of its plans for designing and operating the surface facilities and the underground emplacement areas of a Yucca Mountain repository.

At the conclusion of each meeting, a public comment period has been scheduled. Those wanting to speak during the public comment periods are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record.

A detailed agenda will be available approximately one week before each meeting. Copies of the agendas can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Beginning about March 31, 2003, transcripts of the meetings will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved at the Best Western Tuscany Hotel. Reservations must be made by February 3, 2003, to obtain the meeting rate. When making a reservation, please state that you are attending the Nuclear Waste Technical Review meeting. For more information, contact the NWTRB; Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; telephone 703–235–4473; fax 703–235–4495; or by ''contact form'' at *http://www.nwtrb.gov*.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for permanently disposing of spent nuclear fuel and high-level radioactive waste.

Dated: January 15, 2003.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 03–1258 Filed 1–21–03; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 9b–1, SEC File No. 270–429, OMB Control No. 3235–0480;

Rule 15c2–7, SEC File No. 270–420, OMB Control No. 3235–0479.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 9b–1 Options Disclosure Document

Rule 9b–1 (17 CFR 240.9b–1) sets forth the categories of information required to be disclosed in an options disclosure document (''ODD'') and requires the options markets to file an ODD with the Commission 60 days prior to the date it is distributed to investors. In addition, Rule 9b–1 provides that the ODD must be amended if the information in the document becomes materially inaccurate or incomplete and that amendments must be filed with the Commission 30 days prior to the distribution to customers. Finally, Rule 9b–1 requires a broker-dealer to furnish to each customer an ODD and any amendments, prior to accepting an order to purchase or sell an option on behalf of that customer.

There are 5 options markets that must comply with Rule 9b–1. These 5 respondents work together to prepare a single ODD covering options traded on each market, as well as amendments to the ODD. These respondents file no more than one amendment per year, which requires approximately 8 hours per year for each respondent. Thus, the total compliance burden for options markets per year is 40 hours. The approximate cost per hour is $100, resulting in a total cost of compliance for these respondents of $4,000 per year (40 hours @ $100).

In addition, approximately 2,000 broker-dealers must comply with Rule 9b–1. Each of these respondents will process an average of three new customers for options each week and, therefore, will have to furnish approximately 156 ODDs per year. The postal mailing or electronic delivery of the ODD takes respondents no more than 30 seconds to complete for an annual compliance burden for each of these respondents of 78 minutes, or 1.3 hours. Thus, the total compliance burden per year is 2,600 hours (2,000 broker-dealers X 1.3 hours). The approximate cost per hour to these respondents is $10 per hour, resulting in a total cost of compliance for these respondents of $26,000 per year (2,600 hours @ $10).

The total compliance burden for all respondents under this rule (both options markets and broker-dealers) is 2640 hours per year (40 + 2,600), and total compliance costs of $30,000 ($4,000 + $26,000).

Rule 15c2–7 Identification of Quotations

Rule 15c2–7 (17 CFR 240.15c2–7) enumerates the requirements with which all brokers and dealers must comply when submitting a quotation for a security (other than a municipal security) to an inter-dealer quotation system.

It is estimated that there are 8,500 brokers and dealers. Industry personnel estimate that approximately 900 notices are filed pursuant to Rule 15c2–7 annually. Based on industry estimates that respondents complying with Rule 15c2–7 spend 30 seconds to add notice of an arrangement and 1 minute to delete notice of an arrangement, the staff estimates that, on an annual basis, respondents spend a total of 11.25 hours to comply with Rule 15c2–7, based upon past submissions. The average cost per hour is approximately $35. Therefore, the total cost of compliance for brokers and dealers is approximately $393.75.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate

Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 14, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1343 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27639]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

January 15, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 7, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 7, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

SCANA Corporation, et al. (70–10087)

SCANA Corporation (''SCANA''), a registered holding company, SCANA's three public-utility subsidiary companies, South Carolina Electric & Gas Company (''SCE&G''), Public Service Company of North Carolina (''PSNC''), South Carolina Generating Company, Inc. (''GENCO''), and SCANA's nonutility subsidiary companies, SCANA Services, Inc. (''SCANA Services''), SCANA Energy Marketing, Inc., SCANA Resources, Inc., South Carolina Fuel Company, Inc. (''Fuel Company''), South Carolina Pipeline Corporation, SCG Pipeline, Inc., SCANA Energy Trading, LLC, SCANA Public Service Company, LLC, SCANA Communications, Inc. , ServiceCare, Inc., Primesouth, Inc., Palmark, Inc., SCANA Development Corporation, SCANA Services, Inc., PSNC Blue Ridge Corporation, PSNC Cardial Pipeline Company and Clean Energy Enterprises Inc. (collectively, the ''Applicants''), each located at 1426 Main Street, Columbia, South Carolina 29201 filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b), and 12(c) of the Act and rules 43, 45, 46, 53, and 54, and under the Act.[1]

Applicants request authority to engage in a variety of financing transactions, credit support arrangements, and other related proposals, as more fully discussed below, commencing on the effective date of an order issued under this filing and ending April 15, 2006 (''Authorization Period'').

I. General Terms and Conditions

Financing by each Applicant will be subject to the following limitations (''Financing Parameters''): (i) The effective cost of capital on debt and preferred or equity-linked financings will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality, provided that in no event will the effective cost of capital on (a) long-term debt borrowings exceed 500 basis points over the comparable term U.S. Treasury securities and (b) short-term debt borrowings exceed 500 basis points over the comparable term London Interbank Offered Rate (''LIBOR''); (ii) the maturity of indebtedness will not exceed 50 years, and, preferred stock or preferred or equity-linked securities (other than perpetual preferred stock) will be redeemed no later than 50 years after the issuance thereof, unless converted into common stock; and (iii) the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities under this Application will not exceed the greater of (a) 5% of the principal or total amount of the securities being issued or (b) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

Applicants represent that at all times during the Authorization Period, SCANA and each Utility Subsidiary will each maintain common equity (as reflected in the most recent 10–K or 10–Q filed with the Commission under the Securities and Exchange Act of 1934, as amended, (''1934 Act'') adjusted to reflect changes in capitalization since the balance sheet date therein) of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term and short-term debt), provided that SCANA will, in any event, be authorized to issue common stock (including under the dividend reinvestment or employment plans described below), to the extent authorized in this filing.

Applicants further represent that, at the time of any security issuance under the authority sought below, the rating of any security issued (or the rating of the same class of security) shall be at least investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the 1934 Act. If such issuance is of a type of security that is unrated, the issuer shall have a corporate or senior unsecured debt rating of at least investment grade. Applicants propose that the ratings test will not apply to any issuance of common stock or to issuances of indebtedness by GENCO.[2]

II. Background and Current Proposal

By order dated February 14, 2000,[3] the Commission authorized (as supplemented and amended in subsequent Commission orders, collectively, the ''Financing Orders''),[4] SCANA, the Utility Subsidiaries and the Nonutility Subsidiaries to, among other

[1] SCANA directly owns all of the issued and outstanding common stock of three public utility companies, PSNC, SCE&G, and GENCO, (collectively referred to as the ''Utility Subsidiaries''). All of SCANA's direct and indirect subsidiaries, other than the Utility Subsidiaries, are referred to as the ''Nonutility Subsidiaries.'' The Utility Subsidiaries and Nonutility Subsidiaries are collectively referred to as the ''Subsidiaries.''

[2] According to Applicants, GENCO does not currently have any rated securities outstanding and is not expected to have a security rating during the Authorization Period. Applicants state that, if GENCO receives a security rating during the Authorization Period, the previously outlined ratings test will also apply to any issuance by GENCO.

[3] Holding Co. Act Release Nos. 27135 and 27137.

[4] The Commission issued supplemental orders increasing various financing limitations until February 11, 2003. *See* Holding Co. Act Release No. 27341 (Jan. 31, 2001) and Holding Co. Act Release No. 27476 (Dec. 19, 2001).

things, engage in: (i) External issuances by SCANA of common stock, long-term debt, short-term debt, and other securities for cash; (ii) the entering into by SCANA of transactions to manage interest rate risk (''hedging transactions''); (iii) issuances of debt securities (including commercial paper) and the entering into of hedging transactions by the Utility Subsidiaries; (iv) issuances by Nonutility Subsidiaries of debt securities which are not exempt under rule 52 of the Act; (v) the establishment of a utility money pool (the ''Utility Money Pool'') and a nonutility money pool (the ''Nonutility Money Pool''); (vi) the issuance of intrasystem guarantees by SCANA and the Nonutility Subsidiaries on behalf of Subsidiaries; (vii) the ability of wholly-owned Subsidiaries to alter their capital stock in order to engage in financing transactions with their parent company and to engage in a reverse stock split to reduce franchise taxes, subject, in the case of Utility Subsidiaries, to the approval of, if required, the applicable state commission; (viii) the ability of PSNC to pay dividends out of capital or unearned surplus; (ix) the formation of financing entities and the issuance by such entities of securities otherwise authorized to be issued and sold under the Financing Orders; and (x) the ability of SCANA to keep outstanding advances in favor of certain of its Subsidiaries in an amount of approximately $600 million following the acquisition of PSNC and, indirectly, of PSNC's subsidiaries (''Merger'').[5]

Further, by order dated June 9, 2000 (''Plan Order''), [6] the Commission authorized SCANA to: (i) Grant awards of stock options, stock appreciation rights, restricted stock, performance shares and performance units under its long-term equity compensation plan, (ii) issue under such plan up to five million shares of its common stock through June 8, 2003, and (iii) solicit proxies with respect to such plan at SCANA's 2000 annual meeting of shareholders. Applicants state that the authority sought in the Application will replace and substitute for all the authority granted by the Financing Orders with respect to financing activities and will also replace and substitute for the authority granted by the Plan Order with respect to issuance of shares of common stock for benefit plans described in the Application.

Specifically, Applicants seek authority for the transactions discussed below and request authority to engage in the transactions in the Application during the period from the effective date of the order in this proceeding through the Authorization Period. Also, Applicants state that the proceeds from the sale of securities in external financing transactions will be used for general corporate purposes including: (i) The financing, in part, of the capital expenditures of the SCANA system; (ii) the financing of working capital requirements of the SCANA system; (iii) the acquisition, retirement or redemption under rule 42 of securities previously issued by SCANA or its Subsidiaries or as otherwise authorized by the Commission; (iv) direct or indirect investment in companies authorized under the Act or by Commission rule (including exempt wholesale generators (''EWGs'') or foreign utility companies (''FUCOs'') or in a separate proceeding; and (v) other lawful purposes. Applicants represent that no such financing proceeds will be used to acquire a new subsidiary unless such financing is consummated in accordance with an order of the Commission or an available exemption under the Act. The aggregate amount of proceeds of financings and guaranties used to fund investments in EWGs and FUCOs will not, when added to SCANA's ''aggregate investment'' in these entities at any point in time, exceed 50% of SCANA's ''consolidated retained earnings'' as defined in rule 53(a)(1).

III. SCANA External Financing

SCANA requests authority to obtain funds externally through sales of common stock, preferred stock, preferred and equity-linked securities, long-term debt and short-term debt securities. With respect to common stock, SCANA also requests authority to issue common stock to third parties in consideration for the acquisition by SCANA or a Nonutility Subsidiary of equity or debt securities of a company being acquired under an exemption under the Act or under Commission authority. In addition, SCANA seeks the flexibility to enter into certain hedging transactions to manage interest rate risk.

A. Common Stock

Applicants propose that the aggregate amount of financing obtained by SCANA during the Authorization Period from issuance and sale of common stock, no par value (other than for employee benefit plans or stock purchase and dividend reinvestment plans), when combined with issuances of preferred stock, preferred and equity-linked securities and long-term debt, as described in this section, and other than for refunding or replacement of securities where capitalization is not increased as a result thereof, shall not exceed $2.2 billion for the uses outlined in Part II, above.[7]

SCANA requests authority to sell common stock covered by the Application in any one of the following ways: (i) Through underwriters or dealers; (ii) through agents; (iii) directly to a limited number of purchasers or a single purchaser; or (iv) directly to employees (or to trusts established for their benefit), shareholders and others. Issuances of common stock under SCANA's employee benefit plans and stock purchase and dividend reinvestment plans will not count towards this limitation. If underwriters are used in the sale of the securities, such securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by SCANA) or directly by one or more underwriters acting alone. The securities may be sold directly by SCANA or through agents designated by SCANA from time to time. If dealers are utilized in the sale of any of the securities, SCANA will sell such securities to the dealers as principals. Any dealer may then resell such securities to the public at varying prices to be determined by such dealer at the time of resale. If common stock is being sold in an underwritten offering, SCANA may grant the underwriters a ''green shoe'' option permitting the purchase from SCANA at the same price of additional shares then being offered solely for the purpose of covering over-allotments.

Public distributions may be under private negotiation with underwriters, dealers or agents as discussed above or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All such common stock sales will be with terms and conditions, at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

[5] *See* Holding Co. Act Release No. 27133 (February 9, 2000) (''Merger Order'').

[6] *See* Holding Co. Act Release No. 27183.

[7] Applicants state that this request represents a decrease of $250 million from the authority granted in the Financing Orders reflecting lower anticipated capital requirements for SCANA.

Under the terms of the Act and orders of the Commission, including the Merger Order, SCANA states that it is authorized to acquire securities of companies engaged in energy-related consumer services, ''energy-related businesses'' as described in rule 58, exempt telecommunications companies (''ETCs''), as defined in section 34 of the Act, EWGs and FUCOs. Historically, similar acquisitions have occasionally involved the exchange of parent company stock for securities of the company being acquired in order to provide the seller with certain tax advantages. These transactions are individually negotiated. According to Applicants, the SCANA common stock to be exchanged may be purchased on the open market under rule 42, or may be original issue. Original issue stock may be registered under the Securities Act of 1933, as amended (the ''1933 Act''), but at present it is expected that the common stock would not be registered and the common stock acquired by the third parties would be subject to resale restrictions under rule 144 under the 1933 Act.

B. Preferred Stock and Preferred and Equity-linked Securities

SCANA requests Commission authority during the Authorization Period to issue preferred stock (subject to approval by shareholders of the necessary amendment to the Articles of Incorporation) and to issue directly or indirectly through one or more Financing Subsidiaries preferred securities (including, specifically, trust preferred securities) or equity-linked securities (including, specifically, debt or preferred securities that are convertible, either mandatory or at the option of the holder, into common stock or SCANA indebtedness and forward purchase contracts for common stock). The aggregate amount of financing obtained by SCANA during the Authorization Period from issuance and sale of preferred stock and preferred and equity-linked securities, when combined with issuances of common stock (other than for employee benefit plans or stock purchase and dividend reinvestment plans) and long-term debt, as described below, and other than for refunding or replacement of securities where capitalization is not increased from that in place at June 30, 2002, shall not exceed $2.2 billion.

According to Applicants, preferred stock and preferred equity-linked securities may be sold directly or indirectly through underwriters or dealers in connection with an acquisition similar to that described for common stock above.

C. Long-Term Debt

SCANA requests Commission authority during the Authorization Period to issue long-term debt securities in an aggregate principal amount outstanding at any time which, when combined with issuances of common stock (other than for benefit plans or stock purchase and dividend reinvestment plans), preferred stock, and preferred and equity-linked securities, as described above, and other than for refunding or replacement of securities where capitalization is not increased, shall not exceed $2.2 billion.

Long-term debt securities may be comprised of bonds, notes, medium-term notes or debentures under one or more indentures (the ''SCANA Indenture'') or long-term indebtedness under agreements with banks or other institutional lenders. Any long-term debt security would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms, terms for conversion into any other security of SCANA and other terms and conditions as SCANA may determine at the time of issuance.

Applicants state that the maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term securities of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

Borrowings from banks and other financial institutions may be unsecured and pari passu with debt securities issued under the SCANA Indenture and the short-term credit facilities (as described below). Applicants state that specific terms of any borrowings will continue to be determined by SCANA at the time of issuance and will comply in all regards with the parameters on financing authority in the Application.

D. Short-Term Debt

SCANA requests authority to have outstanding at any one time during the Authorization Period, up to $500 million of short-term debt, which may include institutional borrowings, commercial paper or bid notes (all as described below) and short-term debt issued under the SCANA Indenture or otherwise. This request represents an increase of $50 million over the authority previously granted in the Financing Orders. The authority for short-term debt is in addition to the $2.2 billion requested for common stock, preferred stock and preferred and equity-linked securities and long-term debt as described above.

SCANA requests authority to sell commercial paper, from time to time, in established domestic commercial paper markets. Such commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. Applicants expect that the dealers acquiring commercial paper from SCANA will reoffer such paper at a discount to corporate and institutional investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

SCANA further requests authority to, without counting against the $500 million limit, maintain back-up lines of credit in connection with a commercial paper program in an aggregate amount not to exceed the amount of authorized commercial paper.

Credit lines may be set up for use by SCANA for general corporate purposes in addition to credit lines to support commercial paper as described in this subsection. SCANA will borrow and repay under such lines of credit, from time to time, as it is deemed appropriate or necessary.

E. Financing Risk Management Devices

SCANA requests authority to enter into, perform, purchase and sell financial instruments intended to reduce or manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements. Hedges may also include issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or U.S. governmental agency (*e.g.*, Federal National Mortgage Association) obligations or LIBOR based swap instruments (collectively referred to as ''Hedge Instruments''). Applicants contend that the transactions would be for fixed periods and stated notional amounts. SCANA would employ interest rate derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued under this authority or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt

to variable rate debt and (iii) limiting the impact of changes in interest rates resulting from variable rate debt. In no case will the notional principal amount of any interest rate swap exceed the greater of the face value of the underlying debt instrument or the present market value of the underlying debt instrument and related interest rate exposure. Transactions will be entered into for a fixed or determinable period. Thus, SCANA will not engage in speculative transactions unassociated with its existing outstanding debt and financing needs and activities. SCANA will only enter into agreements with counterparties (''Approved Counterparties'') whose senior debt ratings, as published by a national recognized rating agency, are greater than or equal to ''BBB,'' or an equivalent rating.

In addition, SCANA requests authority to enter into interest rate hedging transactions with respect to anticipated debt offerings (the ''Anticipatory Hedges''), subject to certain limitations and restrictions. Such Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded Hedge Instruments (a ''Forward Sale''), (ii) the purchase of put options on Hedge Instruments (a ''Put Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options Hedge Instruments (a ''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of Hedge Instruments, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade (''CBOT''), the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. SCANA or the appropriate Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. SCANA or the appropriate Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases.

SCANA states that it will comply with Statement of Financial Accounting Standards (''SFAS'') 133 (''Accounting for Derivative Instruments and Hedging Activities''), SFAS 138 (''Accounting for Certain Derivative Instruments and Certain Hedging Activities'') or such other standards relating to accounting for derivative transactions as are adopted and implemented by the FASB. Applicants commit that the Hedge Instruments and Anticipatory Hedges will qualify for hedge accounting treatment under the current FASB standards in effect and as determined at the date such Hedge Instruments or Anticipatory Hedges are entered into.

IV. Utility Subsidiary Financing

Applicants state that the financings by the Utility Subsidiaries for which authority is requested in the Application are outside the rule 52 exemption. Each Utility Subsidiary requests authority to issue securities not exempt under rule 52 for refunding or replacement of securities where its capitalization is not increased from that in place.

A. SCE&G and PSNC Short-Term Debt

SCE&G requests authority to issue short-term debt, including commercial paper and credit lines, in the aggregate amount of $450 million to be outstanding at any one time during the Authorization Period. Authority is requested for PSNC to issue short-term debt, including commercial paper and credit lines, in the aggregate amount of $300 million to be outstanding at any one time during the Authorization Period. These requests represent an increase of $150 million and $100, respectively, over the authority granted in the Financing Orders with respect to SCE&G and PSNC.

SCE&G and PSNC request authority to sell commercial paper, from time to time, in established domestic commercial paper markets in a manner similar to SCANA as discussed above. SCE&G and PSNC may, without counting against the limit set forth above, further maintain back up lines of credit in an aggregate amount not to exceed the amount of authorized commercial paper. Credit lines may be set up for use by SCE&G and PSNC for general corporate purposes in addition to credit lines to support commercial paper as described in this subsection. SCE&G and PSNC will borrow and repay under such lines of credit, from time to time, as it is deemed appropriate or necessary. Subject to the limitations described above, SCE&G and PSNC may engage in other types of short-term financings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

B. PSNC Long-Term Debt

PSNC requests authority to issue up to $300 million in long-term debt securities during the Authorization Period. This request represents a decrease of $150 million from the authority granted in the Financing Orders.

C. GENCO Long-Term Debt

GENCO requests authority to issue up to $100 million in long-term debt securities during the Authorization Period. SCANA expects to make additional exempt capital contributions to GENCO under rule 45. In addition thereto, authority is requested for GENCO to issue debt obligations to effectuate the refunding (including reasonable costs and redemption premiums incurred in connection with such refunding) of its now or hereafter outstanding debt obligations including pollution control loan obligations to achieve lower costs of money, extend maturity or for other proper corporate purposes. At June 30, 2002, GENCO had $77.4 million of long-term debt obligations outstanding. The amounts issued under this authority will not count against the financing limit described above provided for in the Application to the extent they will exclusively constitute refunding transactions that will not increase total capitalization of GENCO.

D. Financing Risk Management Devices

To the extent not exempt under rule 52, the Utility Subsidiaries also request authority to enter into interest rate risk management transactions (hedge instruments) and Anticipatory Hedges of the same type and under the same conditions as are requested above by SCANA.

V. Guarantees, Intrasystem Advances and Intrasystem Money Pool

A. Guarantees and Intrasystem Advances

SCANA requests continued authority to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries (''Guarantees'') as may be appropriate or necessary to enable such Subsidiaries to carry on in the ordinary course of their respective businesses, in an aggregate principal amount not to exceed $600 million outstanding at any one time (not taking into account obligations exempt under rule 45) (''Guarantee Limitation''). Included in this amount are guarantees and other credit support mechanisms by SCANA in favor of its Subsidiaries which were

previously issued. This request represents an increase of $295 million over the authority granted in the Financing Orders, reflecting increased business activity and additional requirements of SCANA's counterparties. SCANA may charge each Subsidiary a fee for each Guarantee provided on its behalf that is not more than that obtainable by the beneficiary of the Guarantee from third parties. Any Guarantees outstanding at the end of the Authorization Period will continue until expiration or termination in accordance with their terms.

Applicants also request authority for the Nonutility Subsidiaries to enter into guarantees, obtain letters of credit, enter into expense agreements and otherwise provide credit support with respect to other Nonutility Subsidiaries, in an aggregate principal amount not to exceed $250 million outstanding at any one time, in addition to guarantees that are exempt under rule 52. The Nonutility Subsidiary providing any such credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above for SCANA's Guarantees.

Furthermore, Applicants request authority for the Utility Subsidiaries to enter into guarantees, obtain letters of credit, enter into expense agreements and otherwise provide credit support with respect to their direct and indirect subsidiaries, in an aggregate principal amount not to exceed $250 million outstanding at any one time in addition to guarantees that are exempt under rule 52. The Utility Subsidiary providing any such credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above.

Applicants state that certain Guarantees may be in support of the obligations of Subsidiaries which are subject to varying quantification. In such cases, SCANA would determine the exposure under such Guarantee for purposes of measuring compliance with the Guarantee Limitation by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, such estimates will be made in accordance with Generally Accepted Accounting Principles (''GAAP''). Such estimation would be reevaluated periodically.

SCANA also requests authority to keep in place advances to its Subsidiaries in an aggregate amount outstanding at any one time of up to $1.25 million. The interest rate used is the weighted average rate on SCANA's long-term and short-term debt. Such outstanding advances by SCANA to its Subsidiaries are open advances with no maturities and are callable by SCANA at any time.

B. Authorization and Operation of the Money Pools

SCANA and the Utility Subsidiaries request authority, through the Authorization Period, to continue the Utility Money Pool established under the authority granted in the Financing Orders, and the Utility Subsidiaries, to the extent not exempted by rule 52, also request authority to continue to make, from time to time, unsecured short-term borrowings from the Utility Money Pool and to contribute surplus funds to the Utility Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. In addition to the Utility Subsidiaries, SCANA requests that Fuel Company be allowed to continue participating in the Utility Money Pool as a result of its financing relationship with SCE&G. For purposes of discussing the Utility Money Pool, the term Utility Subsidiaries shall include Fuel Company.

In addition, SCANA and the Nonutility Subsidiaries (other than Fuel Company),[8] request authority to continue the Nonutility Money Pool. Funds made available by SCANA for loans through the money pools are made available first for loans through the Utility Money Pool (to the extent being operated) and thereafter for loans through the Nonutility Money Pool.

SCANA requests authority to contribute surplus funds and to lend and extend credit to (a) the Utility Subsidiaries through the Utility Money Pool and (b) the Nonutility Subsidiaries through the Nonutility Money Pool.

Applicants believe that the cost of the proposed borrowings through the two Money Pools will continue to generally be more favorable to the borrowing participants than the comparable cost of external short-term borrowings, and the yield to the participants contributing available funds to the two Money Pools will generally be higher than the typical yield on short-term investments.

According to Applicants, the Utility Money Pool is currently not operated. A separate Nonutility Money Pool is in existence amongst SCANA and certain Nonutility Subsidiaries. Each of the Nonutility Subsidiaries (other than Fuel Company) that is an Applicant requests authority to participate in the Nonutility Money Pool. The Nonutility Money Pool is operated on the same terms and conditions as set forth for the Utility Money Pool, except that SCANA funds made available to the Money Pools will be made available to the Utility Money Pool first (to the extent it is operated) and thereafter to the Nonutility Money Pool. No loans through the Nonutility Money Pool are made to, and no borrowings through the Nonutility Money Pool are made by, SCANA. Fuel Company does not participate in the Nonutility Money Pool as it is anticipated to participate in the Utility Money Pool.

SCANA and the Utility Subsidiaries may contribute funds from the issuance of short-term debt as authorized above to the Utility Money Pool. SCANA and the Nonutility Subsidiaries may contribute funds from the issuance of short-term debt to the Nonutility Money Pool.

SCANA Services under the authority of the appropriate officers of the participating companies will continue to handle the operation of the Utility and Nonutility Money Pools, including record keeping and coordination of loans. SCANA Services administers the Utility and Nonutility Money Pools on an ''at cost'' basis and maintains separate records for each money pool. Surplus funds of the Utility Money Pool and the Nonutility Money Pool may be combined in common short-term investments, but separate records of such funds are maintained by SCANA Services as administrator of the pools, and interest thereon is separately allocated, on a daily basis, to each money pool in accordance with the proportion that the amount of each money pool's surplus funds bears to the total amount of surplus funds available for investment from both money pools.

Proceeds of borrowings from the money pools may be used for the purposes set forth in the Financing Parameters. SCE&G, PSNC and GENCO may borrow up to $60 million, $30 million, and $50 million, respectively, at any one time outstanding from the Utility Money Pool. Each of these amounts is twice the amount of the authority granted in the Financing Orders. Applicants state that borrowings by Fuel Company under the Utility Money Pool are exempt under rule 52 under the Act and that borrowings under the Utility Money Pool are in addition to the authority for other

[8] *I.e.,* South Carolina Pipeline Corporation; SCG Pipeline, Inc.; SCANA Energy Marketing, Inc.; SCANA Energy Trading, LLC; SCANA Public Service Company, LLC; SCANA Communications, Inc.; ServiceCare, Inc.; Primesouth, Inc.; Palmark, Inc.; SCANA Resources, Inc.; SCANA Development Corporation; SCANA Petroleum Resources, Inc.; SCANA Services, Inc.; PSNC Blue Ridge Corporation; PSNC Cardinal Pipeline Company; and Clean Energy Enterprises Inc.

financings for which authority is sought in the Application.

VI. Direct Stock Purchase and Dividend Reinvestment Plan, Incentive Compensation Plans and Other Employee Benefit Plans

SCANA proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, up to 10 million shares of SCANA common stock under SCANA's direct stock purchase and dividend reinvestment plan, certain incentive compensation plans and certain other employee benefit plans described in the Application. Under the Financing Orders and the Plan Order SCANA had authority to issue 15 million shares with respect to employment plans through February 11, 2003.

VII. Payment of Dividends Out of Capital or Unearned Surplus by Nonutility Subsidiaries

Applicants request authority for the Nonutility Subsidiaries to pay dividends, from time to time, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law. Without further approval of the Commission, no Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if that Nonutility Subsidiary derives any material part of its revenues from sales of goods, services, electricity or natural gas to any of the Utility Subsidiaries.

VIII. Development and Administrative Activities

In connection with future investments in EWGs, FUCOs and in subsidiaries permitted under rule 58 (''Rule 58 Subsidiaries''), SCANA requests authority to engage directly and through Subsidiaries in preliminary development activities (''Development Activities'') and administrative and management activities (''Administrative Activities'') associated with such investments.[9] Development Activities and Administrative Activities include preliminary activities designed to result in a permitted Nonutility investment such as an investment in an EWG or FUCO under the authority requested in the Application; however, such preliminary activities may not qualify for such status until the project is more fully developed.

Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition or construction of facilities or the securities of other companies. Applicants state that Development Activities will be designed to eventually result in a permitted nonutility investment.

SCANA proposes to expend directly or through Subsidiaries up to $200 million in the aggregate outstanding at any time during the Authorization Period on all such Development Activities.[10] To the extent a Subsidiary for which such amounts were expended for Development Activities becomes an EWG, FUCO, or Rule 58 Subsidiary, the amount so expended will cease to be Development Activities and then be considered as part of the ''aggregate investment'' in such entity. In the case of EWGs, FUCOs and Rule 58 Subsidiaries, such aggregate investment will then count against the limitation on such aggregate investment under rule 53 or rule 58.

IX. Intermediate Subsidiaries

SCANA proposes to create and acquire directly or indirectly the securities of one or more Intermediate Subsidiaries which may be corporations, trusts, partnerships, limited liability companies or other entities. Intermediate Subsidiaries will be organized exclusively for the purpose of acquiring and holding the securities of, or financing or facilitating SCANA's investments in, other direct or indirect nonutility investments.

An Intermediate Subsidiary may be organized, among other things: (1) In order to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, ETC, or other nonutility company which, upon acquisition, would qualify as a Rule 58 Subsidiary; (2) after the award of such a bid proposal, in order to facilitate closing on the purchase or financing of such acquired company; (3) at any time subsequent to the consummation of an acquisition of an interest in any such company in order, among other things, to effect an adjustment in the respective ownership interests in such business held by the SCANA system and non-affiliated investors; (4) to facilitate the sale of ownership interests in one or more acquired Rule 58 Subsidiary, EWG or FUCO; (5) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (6) as a part of tax planning in order to limit SCANA's exposure to U.S. and foreign taxes; (7) to further insulate SCANA and the Utility Subsidiaries from operational or other business risks that may be associated with investments in Nonutility companies; or (8) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following: (1) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of voting or non-voting equity interests; (2) capital contributions; (3) open account advances without interest; (4) loans; and (5) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries.

Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from SCANA's available funds. To the extent that SCANA provides funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO or a Rule 58 Subsidiary, the amount of such funds will be included in SCANA's ''aggregate investment'' in such entities, as calculated (in the case of EWGs, FUCOs and Rule 58 Subsidiaries) in accordance with rule 53 or rule 58, as applicable. [11]

Applicants state that the authority requested for Intermediate Subsidiaries is intended to allow for the corporate structuring alternatives outlined in the Application and will not allow any increase in aggregate investment in EWGs, FUCOs, Rule 58 Subsidiaries, or

[9] Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities.

[10] Applicants state that expenditures in EWGs, FUCOs and in Rule 58 Subsidiaries which count against the ''aggregate investment'' limitation of rule 53 or rule 58, would not count against the $200 million limitation.

[11] If the Intermediate Subsidiary is merely a conduit, the aggregate investment will not ''double count'' both the conduit investment and the investment in the operating company authorized as an EWG, FUCO, Rule 58 subsidiary or other approved investment.

any other business subject to an investment limitation under the Act.

X. Internal Reorganization of Existing Investments

SCANA currently engages directly or through Subsidiaries in certain nonutility businesses. SCANA seeks authority to engage in internal corporate reorganizations to better organize such Subsidiaries and investments. No authority is sought to make new investments or to change the organization of the Utility Subsidiaries.

SCANA and Subsidiaries request authority, to the extent needed, to sell or to cause any Subsidiary to sell or otherwise transfer (i) such businesses, (ii) the securities of current Subsidiaries engaged in some or all of these businesses or (iii) investments which do not involve a Subsidiary (*i.e.* less than 10% voting interest) to a different Subsidiary, and, to the extent approval is required, the Subsidiaries request authority to acquire the assets of such businesses, Subsidiaries or other then existing investment interests. Alternatively, transfers of such securities or assets may be effected by share exchanges, share distributions or dividends followed by contribution of such securities or assets to the receiving entity. In the future, following its direct or indirect acquisition of the securities of new Nonutility Subsidiaries, SCANA may determine to transfer such securities or the assets of such Nonutility Subsidiaries to other Subsidiaries as described in the preceding sentence. SCANA may also liquidate or merge Nonutility Subsidiaries.

Applicants state that such internal transactions would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes.

Applicants state that the transactions proposed will not involve the sale or other disposition of any utility assets of the Utility Subsidiaries and will not involve any change in the corporate ownership of the Utility Subsidiaries. In so far the approval sought does not extend to the acquisitions of any new businesses or activities.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1344 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF OPEN MEETING: Additional Meeting.

An additional Open Meeting will be held on Thursday, January 23, 2003 at 10 a.m., in Room 1C30, the William O. Douglas Room. The Closed Meeting previously announced to be held on Thursday, January 23, 2003 at 10 a.m. has been scheduled to immediately follow the Open Meeting on Thursday, January 23, 2003.

Commissioner Goldschmid, as duty officer, determined that not earlier notice thereof was possible.

The following items previously announced for the January 22, 2003 Open Meeting will be considered during the January 23, 2003 Open Meeting.

1. The Commission will consider adopting rules to establish standards of professional conduct for attorneys who appear and practice before the Commission in any way in the representation of issuers. As proposed, the rules would require an attorney to report evidence of a material violation of securities laws, a material breach of fiduciary duty, or similar material violation by the issuer or by any officer, director, employee, or agent of the issuer to the issuer's chief legal officer or the chief executive officer of the company (or the equivalents); if they do not respond appropriately to the evidence, the rule would require the attorney to report the evidence to the issuer's audit committee, another committee of independent directors, or the full board of directors; if the directors do not respond appropriately, the rule would require or permit the attorney to withdraw and notify the Commission of the withdrawal.

2. The Commission will consider whether to adopt amendments to its registration and reporting forms for registered management investment companies, as well as new rule 30b1–4 and new form N–PX under the Investment Company Act of 1940. These rules would require mutual funds and other registered management investment companies to disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. They would also require registered management investment companies to file with the Commission on an annual basis, and make available to shareholders, their proxy voting records.

3. The Commission will consider whether to adopt a new rule and amendments to its recordkeeping rules for registered investment advisers under the Investment Advisers Act. The new rule would require investment advisers to adopt proxy voting policies and procedures, describe the policies and procedures to clients and provide clients with copies on request, and disclose how clients can obtain information about how the adviser voted their proxies. The recordkeeping amendments would require advisers to keep certain records regarding client proxies.

At times, changes in Commission priorities 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: January 16, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–1492 Filed 1–17–03; 2:21 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47186; File No. SR–BSE–2002–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc., Establishing Trading Rules for the Boston Options Exchange Facility

January 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2002, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 18, 2002, the BSE filed Amendment No. 1 that entirely replaced the original rule filing.[3] On January 9, 2003, the BSE filed Amendment No. 2

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Annette Nazareth, Director, Division of Market Regulation (''Division''), Commission, dated December 18, 2002.

that entirely replaced the original rule filing and Amendment No. 1.[4] 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 BSE proposes to create a new electronic options trading facility of the Exchange, called the Boston Options Exchange (''BOX''). The text of the proposed rule change is available for inspection at the Office of the Secretary, the BSE, the Commission's Public Reference Room, and on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 BSE proposes to establish rules for BOX,[5] a new exchange facility, as that term is defined in Section 3(a)(2) of the Act.[6] BOX would be operated by Boston Options Exchange Group, LLC (''BOX LLC'').[7] BOX would administer a fully automated trading system for standardized equity options intended for the use of Options Participants.[8] It would conduct an auction market similar to the ones conducted by the options exchange markets currently in operation, although the BOX auction would occur electronically and not on a floor. BOX would provide automatic order execution capabilities in the options securities listed or traded on the BSE.

The BSE intends to establish BOX as an options market where orders from all types of market participants may interact directly with each other on a price/time priority basis. Through a specific process called the Price Improvement Period (''PIP''),[9] BOX would attract orders and subject them to price improvement and real price competition without which they would otherwise simply be executed at the NBBO. BOX would offer a price/time priority based limit order book where any Public Customer[10] or broker-dealer market participant could submit orders (post prices) or take liquidity. It would also provide a limited facility for Order Flow Providers[11] to interact with their own order flow but only at prices better than the best bid or offer on the market; and a true opportunity for Market Makers[12] to step in and compete for those orders quickly and anonymously.

a. Summary of BOX Trading Rules. (i) Low Barriers to Trading Access. BOX would have multiple and competing market makers rather than a specialist driven system. There would be no designated specialists, primary market makers, or lead market makers with authority to control trading in a particular options class. Market making in an options class on BOX would be open to all qualified Options Participants who are approved by the Exchange as Market Makers.[13] All appointed competing Market Makers would be responsible for ensuring basic liquidity. BOX has invested heavily to acquire the necessary processing capacity to rapidly and efficiently process the messaging traffic that multiple market making would generate as BOX believes this would significantly intensify competition. This competition would encourage tighter spreads and better pricing to the ultimate advantage of the investor. Further, in the spirit of maintaining a flat and open marketplace, BOX would limit Market Makers' privileges within their appointed classes to the ability to maintain orders on all series and to the opportunity to participate in PIP auctions. BOX Options Participants, whether Market Makers or Order Flow Providers, or both, would not be required to obtain membership in the BSE, nor to lease trading rights from any member (''seat holder'') of the BSE. Market Maker Participants would be required to register as an Options Participant, obtain approval from the BSE and pay a modest annual access fee for trading rights and a low execution fee per contract.[14]

In addition, as BOX would be fully automated and without a central trading floor, Participants would have to access BOX from ''remote'' locations. The reduction in fixed costs and the barriers to entry would give rise to a wider variety of market participants than heretofore seen, resulting in fiercer competition to the ultimate advantage of the Customers who use BOX.

(ii) Anonymous Central Order Book with Price/Time Priority. All orders on BOX would be entered on the BOX Central Order Book (''BOX Book'').[15] Only prices and quantities would be displayed to all trading Participants, maintaining full anonymity with regard to the ownership of each order. With only minor exceptions, all orders would be matched on a strict price and time priority algorithm. This will result in better pricing since the price and time priority algorithm gives a strong incentive to trading Participants to post their very best prices rapidly. There would be no opportunity to ''step up

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[4] *See* Letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Annette Nazareth, Director, Division, Commission, dated January 8, 2003.

[5] The term ''BOX'' means the Boston Options Exchange or Boston Stock Exchange Options Exchange, an options trading facility of the Exchange under Section 3(a)(2) of the Act. *See* proposed BOX Rules, Chapter I, *General Provisions,* Sec. 1(a)(6) (definition of ''BOX'').

[6] 15 U.S.C. 78c(a)(2).

[7] The founding members of BOX LLC are the BSE, the Bourse de Montreal, Inc., and Interactive Brokers Group, LLC.

[8] The term ''Options Participant'' or ''Participant'' means a firm or organization that is registered with the Exchange pursuant to Chapter II of the proposed BOX Rules for purposes of participating in options trading on BOX as an ''Order Flow Provider'' and/or ''Market Maker.'' *See* proposed BOX Rules, Chapter I, *General Provisions,* Sec. 1(a)(39) (definition of ''Options Participant'').

[9] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18, *Price Improvement Period.*

[10] The term ''Customer'' means either a Public Customer or a broker-dealer. The term ''Public Customer'' means a person that is not a broker or dealer in securities. All Customer orders must be submitted through an approved BOX Options Participant. *See* proposed BOX Rules, Chapter I, *General Provisions,* Sec. 1(a)(19) (definition of ''Customer'') and Sec. 1(a)(49) (definition of ''Public Customer'').

[11] The terms ''Order Flow Provider'' or ''OFP'' mean those Options Participants representing as agent Customer Orders on BOX. *See* proposed BOX Rules, Chapter I, *General Provisions,* Sec. 1(a)(45) (definition of ''Order Flow Provider'').

[12] The term ''Market Maker'' means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these proposed BOX Rules. All Market Makers are designated as specialists on the Exchange for all purposes under the Act. *See* proposed BOX Rules, Chapter I, *General Provisions,* Sec. 1(a)(31) (definition of ''Market Maker'').

[13] *See* proposed BOX Rules, Chapter VI, *Market Makers,* Sec. 4, *Appointment of Market Makers.*

[14] The BSE intends to file under separate cover a proposed rule change regarding BOX related fees, pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b).

[15] The term ''Central Order Book'' or ''BOX Book'' means the electronic book of orders maintained by the BOX Trading Host. *See* proposed BOX Rules, Chapter I, *General Provisions,* Sec. 1(a)(12) (definition of ''Central Order Book'').

and match'' in order to participate in a trade on BOX.

(iii) All Orders Firm for All Traders. All orders on the BOX Book would be firm at all times for all trading Participants. An order on the BOX Book is available in its entirety to all parties on a ''first come, first serve'' basis whether from a Market Maker, Public Customer or broker/dealer account.

(iv) Price Improvement Period. To address the issues of internalization of Customer Orders by Order Flow Providers and Market Makers, BOX has developed PIP. The BOX PIP would be a very rapid auction starting at a price better than the current NBBO where BOX Participants could compete to improve the Customer side of the trade.

b. BOX Regulated as a Facility of the Exchange. The BSE has entered into various agreements with BOX LLC under which BOX LLC would operate BOX as a facility of the BSE. Pursuant to these agreements, the BSE would maintain responsibility for all regulatory functions related to the facility, and BOX LLC would be responsible for the business of the facility to the extent those activities are not inconsistent with the regulatory and oversight functions of the BSE. The BSE intends to file with the Commission under separate cover a proposed rule change regarding the delegation of authority from the BSE to Boston Options Exchange Regulation, LLC (''BOXR''), a wholly-owned subsidiary of the BSE, for regulatory functions related to the facility such as surveillance and compliance (''Delegation Plan''). In addition, the BSE intends to file under the Delegation Plan a proposed rule change regarding the relationship between the BSE, BOXR, and the BOX entities. In addition, the BSE intends to file the necessary rule changes to allow the BSE to join the Options Intermarket Linkage Plan, the Options Price Reporting Authority (''OPRA'') and the Options Self-Regulatory Council (''OSRC''), which have been authorized under the applicable National Market System (''NMS'') plans.[16]

c. The BSE Would Conduct All Necessary Surveillance of BOX. As part of its obligations under the Act and pursuant to its own rules, the BSE would conduct all necessary surveillance of the operation of and trading on BOX.[17] The BSE intends to implement a state-of-the-art electronic system for producing detailed audit trails of all orders submitted to BOX. The BSE emphasizes that it has not only the technological capability to establish and maintain an audit trail, but also, the staff expertise and capital resources to satisfactorily oversee a new electronic options market.

The BSE, as a well-established exchange, has the requisite staff experience to support and to supplement the technological surveillance necessary for the all-electronic BOX. As one of the nation's oldest securities exchanges, the BSE has repeatedly demonstrated its success in attracting qualified management and regulatory staff, who have proven their knowledge of the federal securities laws and the self-regulatory role of a registered exchange. Furthermore, consistent with the requirements of the Act, the BSE will demonstrate to the Commission, as necessary, that it has adequate financial resources to fund a surveillance program for a fully electronic options trading facility. In accordance with its regulatory responsibilities, the BSE will also demonstrate to the Commission that the technological capabilities of BOXR and BOX would be more than adequate for the surveillance of trading on BOX.[18]

d. The Boston Options Exchange. BOX, the proposed electronic options trading facility of the BSE, would offer liquidity, price quality and low cost of execution for market participants. BOX would function as a limit order book under the principle of price/time priority for all market participants' orders and would provide execution enhancements. Market Makers would participate electronically in BOX to enhance liquidity in the book and would be able to interact with order flow subject to automatic price improvement requirements. In addition, orders would be permitted facilitation on BOX subject to price improvement where the price and time priority of the limit order book is protected.

BOX is described in more detail in the following subsections. Specifically, subsection (i) describes the BOX membership structure and the registration requirements as well as the trading obligations of Market Makers and Order Flow Providers. Subsection (ii) describes trading on the BOX Trading Host in detail, including a description of how orders are executed during BOX's trading session.

(i) BOX Membership Structure: Options Participants. With the introduction of BOX, the BSE intends to change its membership rules to reflect the new all-electronic options trading environment. BOX would have only one category of members, as that term is defined in the Section 3(a)(3)(A) of the Act: [19] Options Participants. Any registered broker-dealer who wishes to be a member once BOX begins operation would have to become a BSE-approved Options Participant.[20] By becoming an Options Participant, the registered broker-dealer would be permitted to effect options transactions on BOX. An Options Participant: (1) Must agree to be bound by the Constitution, By-Laws and Rules of the BSE and the BOX Rules, and by federal securities laws, and by all applicable rules and regulations of the Commission; (2) would not acquire ownership or distribution rights in the BSE or BOX; and (3) would have representation as will be proposed in the Delegation Plan to be filed with the Commission by the BSE under separate cover.

BOXR would authorize any Options Participant who met certain enumerated requirements to obtain access to BOX. The requirements for access are as follows: First, all Options Participants must make application to, and be approved by, the BSE as Options Participants. Second, all approved Participants must enter into an Options Participation Agreement with the Exchange. Options Participants would be approved to participate on BOX as Market Makers, Order Flow Providers, or both.

(A) Market Makers

Registered BOX Market Makers would be designated as dealer-specialists on the BSE for all purposes under the Act.[21]

(1) Registration. To become a market maker on BOX, an Options Participant would have to register as a BOX Market Maker by filing a written application with the BSE.[22] In determining whether to approve a Market Maker application, the BSE would consider, among other

[16] The OSRC is currently operating under a draft agreement, as opposed to a formal plan declared effective by the Commission pursuant to Section 11A of the Act, 15 U.S.C. 78k–1.

[17] The BSE will delegate to BOXR the authority to provide the necessary surveillance of the operation of and trading on BOX pursuant to the proposed Delegation Plan to be filed by the BSE under separate cover.

[18] The BSE will comply with the Commission's Automation Review Policy with regard to BOX. *See* Securities Exchange Act Release No. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) (''ARP I Release'') and Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (''ARP II Release''). The BSE will ensure that BOX has ''the capacity to accommodate current and reasonably anticipated future trading volume levels adequately and to respond to localized emergency conditions.''

[19] *See* 15 U.S.C. 78c(a)(3)(A).

[20] *See* proposed BOX Rules, Chapter II, *Participation,* Sec. 1, *Options Participation.*

[21] *See* proposed BOX Rules, Chapter VI, *Market Makers,* Sec. 1, *Market Maker Registration.*

[22] *See* proposed BOX Rules, Chapter VI, *Market Makers,* Sec. 1(a), *Market Maker Registration.*

things, the Options Participant's capital, operations, personnel, technical resources, and disciplinary history. Upon receipt by the Options Participant of notice of the BSE's approval, the Options Participant's Market Maker registration would become effective.[23] If the application is disapproved, the applicant Options Participant would have the opportunity to appeal the specific grounds of the denial under the provisions of Chapter II, *Participation,* Section 3, *Denial of and Conditions to Participation.* A Market Maker's registration could be suspended or terminated by the BOXR upon a determination that the Market Maker has failed to properly comply with the Market Maker's obligations under proposed Chapter VI Section 5 of the BOX Rules, as discussed below.

(2) Appointments. In addition to registering as a Market Maker generally, a Market Maker must obtain an appointment in each options class in which it wishes to make a market on BOX by filing an application with BOXR. In determining whether to approve or disapprove the Market Maker's appointment in a class, BOXR could consider, among other things: (1) The financial and technical resources available to the Market Maker; (2) the Market Maker's experience, expertise and past performances in making markets or options trading; and (3) the maintenance and enhancement of competition among Market Makers in each class of options to which it is appointed.[24]

Each Market Maker may be appointed to any options class listed on BOX for trading. Such an appointment would consist of at least one class and may include all classes traded on the Exchange. BOXR would not list an options class for trading unless at least two Market Makers are appointed to the options class.[25] In addition, before BOXR opens trading for any additional series of an options class, it would require at least two Market Makers to be appointed for trading that particular class. Upon appointment, BOXR would require Market Makers to maintain active markets in that class for a period of at least six months.[26] However, BOXR would not require a Market Maker in a class to continue trading in that class if BOXR makes an affirmative determination that continued trading in that class by a single Market Maker is to the detriment of that Market Maker, of no adverse consequence to an existing Customer of BOX or an Options Participant, and serves no greater purpose in the fair and orderly functioning of the marketplace.[27] Once a class is opened for trading and subsequently only one Market Maker remains appointed to that class, BOXR may continue trading in that class if BOXR makes an affirmative determination that halting of trading in such class would be detrimental to the remaining Market Maker, and that continued trading in such class by one Market Maker would be in the interest of maintaining a fair and orderly marketplace and would not create adverse consequence to an existing Customer of BOX or an Options Participant.[28]

Under the proposal, BOXR may suspend or terminate any appointment of a Market Maker and may make additional appointments or change the options classes included in a Market Maker's appointment whenever, in BOXR's judgment, the interests of a fair and orderly market are best served by such action.[29]

(3) Obligations. Market Makers on BOX would electronically engage in a course of dealing for their own account to enhance liquidity available on BOX and to assist in the maintenance of fair and orderly markets. In addition, Market Makers may interact with directed order flow, subject to price improvement requirements and certain obligations and duties. Specifically, Market Makers would have to satisfy the following responsibilities and duties during trading: (1) Maintain continuous firm, two-sided quotes, which are limit orders submitted to BOX by a Market Maker, in those options classes in which the Market Maker is appointed to trade; (2) maintain adequate minimum capital in accordance with Chapter VI Section 9; (3) remain in good standing with BOXR; (4) inform BOXR of any material change in financial or operational condition or in personnel; and (5) clear and settle transactions through the facilities of a registered clearing member.[30] If BOXR found any substantial or continued failure by a Market Maker to meet the above obligations and duties, BOXR would subject the Market Maker to disciplinary action, suspension or revocation of the Market Maker's appointment in one or more options classes.[31] Subject to certain limitations, a Market Maker may enter all order types permitted to be entered by Customer participants under the Rules to buy or sell options in classes of options listed on BOX to which the Market Maker is not appointed.[32]

(B) Order Flow Providers

Order Flow Providers (''OFPs'') would be those Options Participants representing orders of Public Customers and other Broker Dealers on the BOX market. OFPs may also register as Market Makers. OFPs may trade as principal, both as contra party to Customer Orders submitted to BOX by such OFP and as contra party to unrelated orders submitted to BOX by other Options Participants. OFPs may only act as contra party to their own Customer Orders pursuant to the rules of the Price Improvement Period (see discussion below).[33]

(ii) The BOX Trading Host. BOX would operate an automated trading system for standardized equity options. This section describes the most significant rules and procedures governing trading on BOX.

(A) Generally

Each Market Maker on BOX would enter its own independent quotations into the BOX Trading Host (''Trading Host''). Market Makers would enter a quantity with their quotations, which must meet the minimum size requirements established by the Exchange.[34] OFPs would enter agency and principal orders into the Trading Host. Market Makers and OFPs may enter into BOX the following standard types of orders: market orders, limit orders, Day Orders, Good-Til-Canceled (GTC) Orders, Fill-or-Kill Orders, Fill-

[23] *See* proposed BOX Rules, Chapter II, *Participation,* Sec. 2, *Qualification Requirements for Options Participants* and proposed BOX Rules, Chapter VI, *Market Makers,* Sec. 1, *Market Maker Registration.*

[24] *See* proposed BOX Rules, Chapter VI, *Market Makers,* Sec. 4(b), *Appointment of Market Makers.*

[25] *See* proposed BOX Rules, Chapter IV, *Securities Traded on the Boston Options Exchange Facility,* Sec. 5(a), *Minimum Participation Requirement for Opening Trading of Option Classes.*

[26] *See* proposed BOX Rules, Chapter VI, *Market Makers,* Sec. 5(a)(viii), *Obligations of Market Makers.*

[27] *See* proposed BOX Rules, Chapter IV, *Securities Traded on the Boston Options Exchange Facility,* Sec. 5(b), *Minimum Participation Requirement for Opening Trading of Option Classes.*

[28] *See* proposed BOX Rules, Chapter IV, *Securities Traded on the Boston Options Exchange Facility,* Sec. 5(c), *Minimum Participation Requirement for Opening Trading of Option Classes.*

[29] *See* proposed BOX Rules, Chapter VI, *Market Makers,* Sec. 4(c), *Appointment of Market Makers.*

[30] *See, generally,* proposed BOX Rules, Chapter VI, *Market Makers.*

[31] *See* proposed BOX Rules, Chapter VI, *Market Makers,* Sec. 5(e), *Obligations of Market Makers.*

[32] *See* proposed BOX Rules, Chapter VI, *Market Makers,* Sec. 6(e), *Market Maker Quotations.*

[33] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18, *The Price Improvement Period.*

[34] *See* proposed BOX Rules, Chapter VI, *Market Makers,* Sec. 6(a), *Market Maker Quotations.*

and-Kill Orders, Market-on-Open Orders, and Minimum Volume Orders.[35] Market Makers and OFPs would receive from BOX information on all of the orders and quotations pending in the Trading Host, including a display of up to the five best bids and offers currently quoted on BOX in each options series, as well as the aggregate size at each of the five best prices.[36]

(B) Order Ranking and Display

The BOX Book contains all the Options Participants' orders. Limit orders of Options Participants submitted to BOX would be ranked and maintained in the BOX Book according to price/time priority, such that within each price level, all orders would be organized by the time of entry. [37] No distinction is made to this priority with regard to account designation (Public Customer, Broker/Dealer or Market Maker). The orders are ranked based on the specified limit price and the time of original order entry in the Trading Host. If an order is executed in its entirety, its price/time priority is also exhausted and so, the next order in price/time priority would move to the top of the BOX Book. An Options Participant must submit a new order if it wishes to refresh its order. This new order would be ranked at the specified limit price according to the time that the new order was entered.

(C) Order Execution and Priority Rules

Trades would occur when orders or quotations match in the Trading Host. If more than one order has been entered into the Trading Host at the same price, priority would be based on the time of order entry.[38] If an Options Participant enters a limit order into the Trading Host that matches an order already in the Trading Host, a trade would occur at the price of the order already in the Trading Host up to the available size. After executing against that order, the limit order would trade against other orders in the Trading Host until the limit order is filled in its entirety or the limit order depletes the available size at that price. If any amount of the limit order remains unexecuted, the balance of the order would become either the best bid or offer.[39]

(D) Price Improvement Period

The BOX PIP system would enhance the traditional firm facilitation mechanism and provide guaranteed price improvement opportunities for Customers. Chapter V Section 18 of the BOX Rules provides an OFP with the ability to use the PIP to enter a Customer Order and execute that order as principal.[40] An OFP is not otherwise permitted to execute an agency order as principal unless the order is first permitted to interact with other interest on BOX through the PIP system.[41]

In order to preclude unfair internalization, BOX Rules prevent an OFP from entering simultaneous Customer and proprietary orders before there is an opportunity for the Customer Order to interact with other trading interest on BOX.[42] BSE has proposed supplementary material in the BOX Rules to provide that it is a violation of Chapter V, Section 17 for an OFP to circumvent the Rules by providing an opportunity for a Customer to execute against agency orders handled by the OFP immediately upon their entry into the Trading Host. In addition, it would be a violation for an OFP to cause the execution of an order it represents as agent on BOX by orders it solicited from Options Participants and non-Option Participant broker-dealers to transact with such orders, whether such solicited orders are entered into the Trading Host directly by the OFP or by the solicited party (either directly or through another Participant), if the OFP fails to expose those orders on BOX as required by Chapter V, Section 17. The BSE believes that these interpretations would prevent an OFP from thwarting the restrictions on trading as principal.

(1) Key Features of the Price Improvement Period

(a) An OFP may submit any Customer Order for price improvement into the PIP at a price of at least one cent better than the prevailing NBBO.

(b) Market Makers and the introducing OFP may compete for the Customer execution in one-cent increments; however, all BOX Participants are informed of each PIP and may submit competing orders at standard price increments.

(c) A Market Maker would need to match or improve the price proposed by the Primary Improvement Order [43] for the opportunity to participate in the execution.

(d) The PIP would run for three seconds and cannot be cancelled by the OFP.

(e) Execution is in price and time priority at the end of the PIP with two exceptions: (1) The OFP is guaranteed no more than a minimum quantity,[44] provided he has matched the PIP execution price and (2) a Market Maker Prime [45] may in some cases have partial time priority over other Market Makers at the end of the PIP.

(f) As the execution of the Customer Order is guaranteed at the start of the PIP, the Customer Order has priority over all other orders on his side of the market during the PIP.

(2) OFP Submission of Order to PIP

OFPs executing agency orders may designate market and marketable limit Customer Orders for price improvement and submission to the PIP. Customer Orders designated for the PIP would be submitted to BOX with a matching contra order, the ''Primary Improvement Order,''[46] equal to the full size of the Customer Order. The Primary Improvement Order would be on the opposite side of the market than that of the original Customer Order and represent a bid (offer) that is at least $.01 greater than the bid (less than the

[35] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 14, *Order Entry.*

[36] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 16(a)(ii), *Execution and Price/Time Priority.*

[37] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 16(a)(i), *Execution and Price/Time Priority.*

[38] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 16(a)(iv)(2), *Execution and Price/Time Priority.*

[39] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 16(a)(iv)(3), *Execution and Price/Time Priority.*

[40] BOX Order Flow Providers and Market Makers may attempt to interact with their own orders by initiating a PIP. However, for purposes of simplicity in this discussion, initiators of PIPs generally are referred to as ''Order Flow Providers.''

[41] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 17(b), *Customer Orders and Order Flow Providers.*

[42] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Section 17, Supplementary Material .01 and .02, Customer Orders and Order Flow Providers.

[43] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(e), *The Price Improvement Period. See also,* the discussion of OFP Submission of Order to PIP and PIP Participants and Improvement Orders in Sections (d)(ii)(D)(2) and (4) below.

[44] *See* the discussion of PIP Trade Allocation in Section (d)(ii)(D)(7).

[45] The Market Maker Prime is a BOX Market Maker who has partial time priority over all other Market Makers in the matching mechanism of the PIP. The Market Maker Prime is the first Market Maker who has a quote that is equal to the NBBO on the contra side of the market as the Customer Order at the instant the PIP is initiated. See the discussion of Market Maker Prime in Section (d)(ii)(E) below.

[46] An Improvement Order is any order entered into the PIP by the OFP at a price better than the specified NBBO or any order enter by a Market Maker at or better than the OFP's Primary Improvement Order. The subsequent price modifications to an OFP's Primary Improvement Order are treated as new Improvement Orders for the sake of establishing priority in the PIP process. *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(e)(i)–(ii), *The Price Improvement Period. See also,* the discussion of PIP Participants and Improvement Orders in Section (d)(ii)(D)(4) below.

offer) of the National Best Bid Offer (NBBO) at the time of the commencement of the PIP.[47]

(3) Pilot Program—No Minimum Size Requirement for Price Improvement

BSE believes the customer protection benefits of the PIP process should be open to orders of all sizes since:

(a) The price to the Customer for PIP orders must better the prevailing NBBO;

(b) The price to the Customer is firm;

(c) The OFP and not the Customer bears the risk of market movements during the PIP; and

(d) The Customer is given an opportunity for further price improvement during the three second exposure period.

From the Customer's perspective, the only result of having the Customer's small order being ineligible for the PIP would be that the Customer's order would likely be filled at a price at least a penny worse than if it had been filled through the PIP.[48] Indeed, because of the relatively lower risk to the OFP and the Market Makers by virtue of the small size, there is a greater likelihood of price improvement to be provided by BOX Market Makers stepping in and participating in the PIP. On the other hand, creating a minimum size requirement would mandate that all small orders are automatically executed at the prevailing quotes with no opportunity for any price improvement. Consequently, BOX would have no minimum size requirement for orders entered into the PIP, for at least a Pilot Period to extend eighteen months from the day trading commences on BOX. During this Pilot Period, BOX would supply the Commission with data to support at least the following tenets:

(a) That there is meaningful competition for all size PIP orders;

(b) That there is significant price improvement for all orders executed through the PIP, and;

(c) That there is an active and liquid market functioning on BOX outside of the PIP mechanism.

Any data that is submitted to the Commission by the BSE during this Pilot Period and related directly to it, would be submitted on a confidential basis.[49]

(4) PIP Participants and Improvement Orders

Improvement Orders are specialized orders submitted in increments of $.01 that are valid only in the PIP process. Improvement Orders may not be submitted in increments smaller than $.01.[50] An Improvement Order is any order entered into the PIP by the OFP at a price better than the specified NBBO or any order entered by a Market Maker at or better than the OFP's Primary Improvement Order. PIP Participants would enter Improvement Orders seeking to gain priority to give the contra Customer Order an improved execution price over the NBBO. Only BOX Market Makers may submit competing Improvement Orders and only for those classes within their appointment. OFPs may submit Improvement Orders only in the PIP auction for which they have submitted the Primary Improvement Order.[51] The subsequent price modifications by the OFP to an OFP's Primary Improvement Order are treated as new Improvement Orders for the sake of establishing priority in the PIP process.[52] Market Makers and OFPs meeting the foregoing criteria would be deemed PIP Participants for that specific PIP only, and may continually submit competing Improvement Orders during that PIP.[53] Options Participants not deemed PIP Participants may nonetheless submit orders to the Trading Host during the PIP in order to compete; however, the normal price increments would apply to these orders.[54]

BOX Improvement Orders are firm and cannot be cancelled during the PIP. Thus, from the outset of the PIP, a Customer is guaranteed a locked-in trade at a price at least a penny better than the NBBO, and the OFP (and not the Customer) bears full market risk during the PIP. An OFP is not permitted to cancel its Primary Improvement Order or the Customer Order nor modify the size of its Primary Improvement Order at any time during the PIP, and may only modify the price of its Primary Improvement Order by improving it. A Market Maker, except for a Market Maker that has submitted a Primary Improvement Order, may: (1) Submit a competing Improvement Order for any size up to the size of the Customer Order, (2) submit competing Improvement Order(s) for any price equal to or better than the Primary Improvement Order, (3) improve the price of his Improvement Order at any point during the PIP, and (4) decrease the size of his Improvement Order, but only if he improves the price of that order.[55]

(5) Competition During the PIP

At the conclusion of the PIP, the Customer Order would be matched in accordance with price/time priority against the best prevailing orders on BOX, whether Improvement Orders or subsequent ''unrelated orders'' [56] to the PIP that were received by BOX during the PIP process from non-PIP Participants.[57] Any portion of an Improvement Order left unfilled would be cancelled. The only exceptions to time priority in the PIP matching process concern limited priority accorded the OFP and Market Maker Prime at the PIP conclusion; these are described below in detail.[58]

In cases where an unrelated order on the same side as the Customer Order is submitted to BOX during a PIP, which is immediately executable (all or partially) against either an Improvement Order or an order on the BOX Book, the PIP would be concluded and the Customer Order would be matched with the Improvement Order(s) to the fullest extent possible. Improvement Orders would not be matched with unrelated orders; however, the Customer Order may be executed against unrelated orders where the latter have a better price than the Improvement Order.[59]

The BOX Rules provide strong incentives for both OFPs and Market Makers to compete aggressively for Customer Orders entered into the PIP process. First, in contrast to some other systems, under the proposed BOX Rules no one would get a ''last look'' to step

[47] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(e), *The Price Improvement Period.*

[48] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18, Supplementary Material, *The Price Improvement Period.*

[49] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18, Supplementary Material, *The Price Improvement Period.*

[50] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(h), *The Price Improvement Period.*

[51] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(e)(i), *The Price Improvement Period.*

[52] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(e)(ii), *The Price Improvement Period.*

[53] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(e)(i), *The Price Improvement Period.*

[54] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(e),(f),(g), *The Price Improvement Period.*

[55] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(e)(ii), *The Price Improvement Period.*

[56] An ''unrelated order'' would be defined as a non-Improvement Order entered into the BOX market during a PIP. *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(a), *The Price Improvement Period.*

[57] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(e)(iii), *The Price Improvement Period.*

[58] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(f), *The Price Improvement Period* and Sec. 19, *Market Maker Prime.*

[59] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(g), *The Price Improvement Period.*

up and match the prices bid or offered during the PIP. Therefore, the OFP attempting to trade against its own order through the PIP process, as well as the Market Makers who are competing to participate on that order, all have a strong incentive to put their best prices forward first before the PIP ends. In the PIP, the Market Maker would need to match or improve the price proposed by the OFP's Primary Improvement Order (or its modification) if the Market Maker is to participate in the execution. The PIP process is not a face-to-face or screen-based negotiation, but a true auction—where market participants are anonymous, where all the prices are firm from the beginning, where the auction cannot be cancelled by the facilitation firm, and where no one gets a last look to change one's price before the auction ends. Since the PIP is an anonymous trading environment where there is no specialist or market maker who controls the process and there is no physical, technological or procedural impediment to posting a better price and breaking into a trade, BOX Market Makers would have the opportunity and incentive not to let trades happen at uncompetitive prices.

(6) PIP Duration Is Three Seconds

The PIP auction process would be 3 seconds in duration because the BSE believes it is enough time for a vigorous, multi-round, electronic price improvement auction among the BOX Market Makers and the OFP who initiates the PIP, and yet is not so long that it is economically infeasible for OFPs to be firm for the Customer Order for at least a penny better than the prevailing NBBO at the inception of the PIP. This gives the Customer price protection against market movements but also exposes the OFP to full market risk during the entire course of the PIP. This exposure cannot be hedged because the OFP has no way of knowing with certainty how much—if any—of the trade the OFP would receive because the OFP's price may be matched or bettered by any Market Maker during the PIP.[60]

Balanced against the fact that the OFP is held firm and bears full market risk during the PIP, the PIP must nonetheless be long enough to assure that the OFP's price to the Customer is a fair one—meaning among other things that a competitive, multi-round auction is possible between and among the OFP and the Market Makers in the relevant class. As a practical matter, the PIP process for all Options Participants would necessarily be governed by computerized systems, not by human traders. Market Makers and OFPs can easily either develop their own software to manage trading on BOX, or utilize one of the many front-end solutions that have been written to connect with electronic-based exchanges.

In addition to the fact that BOX OFP and Market Maker prices must be firm during the PIP, the three second duration of the PIP reflects the processing speed of the trading system upon which BOX would be operated and the speed of network transmissions.[61] The BOX system would implement full multi-round and multi-participant auctions during a PIP of three seconds. Therefore, the Exchange believes that a three second PIP is the best way to minimize the market risk borne by OFPs so that they can provide firm, aggressive pricing to Improvement Orders, and yet assure that those prices are tested by a reasonable electronic auction process.

(7) PIP Trade Allocation

As mentioned earlier, at the conclusion of the PIP, the Customer Order is executed against all orders on the opposite side of the BOX Book (both Improvement Orders, Market Maker quotes, unrelated orders and the Primary Improvement Order submitted by the OFP) following price priority. When two or more orders on the opposite side of the BOX Book are at an identical price limit, time priority is used with two exceptions.

As discussed below, if the OFP Primary Improvement Order as modified (if at all) is equal to the best limit price, the Primary Improvement Order has priority over all orders for 40 percent of the Customer Order. If there is a Market Maker Prime for this PIP, and the Market Maker Prime's Improvement Order is also at the best limit, the Market Maker Prime has priority over all other Market Maker Improvement Orders and unrelated orders up to one third of the unexecuted portion of the Customer Order remaining at that price level.[62]

(8) OFP Priority Over Other Orders at Identical Price

Upon conclusion of the PIP, the OFP who submitted the Primary Improvement Order retains certain priority privileges. If the OFP's Primary Improvement Order as modified (if at all) during the PIP is matched by or matches a competing Improvement Order or unrelated order at any price level, the OFP retains priority for only forty percent (40%) of any unexecuted portion of the Customer Order available at that price level, notwithstanding the time priority of the Primary Improvement Order, competing Improvement Order or unrelated order. The OFP will receive additional allocation only after all other orders have been filled at that price level.[63]

(E). Market Maker Prime

The Market Maker Prime is a BOX Market Maker who has partial time priority over all other Market Makers in the matching mechanism of the PIP. The Market Maker Prime is a Market Maker who has a quote[64] that is equal to or better than the NBBO on the same side of the market as the Primary Improvement Order at the instant the PIP is initiated. If more than one Market Maker meets the criteria, the Market Maker whose quote has time priority would be the Market Maker Prime for that PIP.[65]

At the conclusion of the PIP, the Marker Maker Prime (if he has entered an Improvement Order during the PIP at a limit price which is executable against the Customer Order at the end of the PIP) would have a trade allocation priority of up to one third of the unexecuted portion of the Customer Order remaining at that price level after any priorities accorded the OFP have been met. The Market Maker Prime would have priority over all other Market Maker Improvement Orders and unrelated orders up to one third of the unexecuted portion of the Customer Order remaining at that price level.

If the Market Maker Prime modifies his quote on BOX during the PIP to meet the best limit price instead of entering an Improvement Order into the PIP process, the Market Maker Prime rules do not apply to the modified quote. The trade matching follows the normal PIP priority rules where the Market Maker Prime's modified quote would be treated as an unrelated order. If the Market Maker Prime cancels his quote during the PIP, the Market Maker keeps his status of Market Maker Prime for any Improvement Order previously entered

[60] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18, *The Price Improvement Period.*

[61] The communication of PIP orders from the BOX hub to BOX market participants is not reliant on OPRA and does not impact OPRA system capacity.

[62] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 19, *Market Maker Prime.*

[63] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 18(f), *The Price Improvement Period.*

[64] In this context a Market Maker's ''quote'' is derived from his order on the BOX Book and does not include any Improvement Orders in the PIP process.

[65] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 19, *Market Maker Prime.*

in that PIP.[66] The Market Maker Prime rules apply only if the Market Maker Prime enters an Improvement Order during the PIP, these rules do not apply to the quote of the Market Maker Prime on BOX outside of the PIP process. At the conclusion of the individual PIP, the Market Maker loses his status as Market Maker Prime. A Market Maker Prime would be determined each time a new PIP is triggered. There is not necessarily a Market Maker Prime for each PIP.[67]

(F) PIP Examples

BOX—PIP TRADE ALLOCATION EXAMPLES

Below are examples of trade allocation for orders executed through the BOX PIP. The examples cover only orders executed via the PIP—all other orders executed on BOX are allocated in strict price/time priority.

Principles regarding the PIP:

—PIP duration is 3 seconds and must begin with an OFP Primary Improvement Order at a price at least one penny better than NBBO.

—If the OFP Primary Improvement Order is at the same price level at the end of the PIP as one or more Market Makers, then the OFP's allocation is 40%.

—Allocation among Market Makers who are all at the same price level at the end of the PIP is based on time priority of their Improvement Orders during the PIP, except that a Market Maker Prime would be entitled to a minimum of one third of the total available Market Maker allocation compared to other Market Makers at the same price level.

FOR EACH EXAMPLE ..... NBBO is 2.00 bid 2.15 offer. BOX is 2.00 bid 2.15 offer at start of PIP.	Trade Allocation (# of contracts) If OFP and Market Maker Prime & 2 Other MMs Are on Parity at End of PIP (Market Maker A is Market Maker Prime).	Trade Allocation If Market Maker Prime & 2 Other MMs Are on Parity at End of PIP and There is No OFP on Parity (Market Maker A is Market Maker Prime)	Trade Allocation If 3 MMs Are on Parity and There Is No Market Maker Prime on Parity.
(NOTE: For simplicity, these examples all involve Customer sell orders, but the PIP process works the same for buys)			
1. OFP receives an order to sell 100 contracts and starts PIP with Primary Improvement Order bid of 2.01 or better. In time priority in the PIP, MMB bids 2.04 for 50 contracts, MMC bids 2.04 for 50 contracts, and MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 40 MMC 0	MMA 33 MMB 50 MMC 17	MMB 50. MMC 50. MMA 0.
2. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP, MMB bids 2.04 for 20 contracts, MMC bids 2.04 for 30 contracts, and MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 20 MMC 20	MMA 33 MMB 20 MMC 30 MMA 17 (MMA total = 50; 33 ''Prime'' allocation + 17 time priority)	MMB 20. MMC 30. MMA 50.
3. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMB bids 2.04 for 50 contracts, MMC bids 2.04 for 30 contracts, MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 40 MMC 0	MMA 33 MMB 50 MMC 17	MMB 50. MMC 30. MMA 20.
4. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMA bids 2.04 for 50 contracts, MMB bids 2.04 for 30 contracts, MMC bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMA 30 MMB 10 (MMA total = 50; 20 ''Prime'' allocation + 30 time priority)	MMA 33 MMA 17 MMB 30 MMC 20 (MMA total = 50; 33 ''Prime'' allocation + 17 time priority)	MMA 50. MMB 30. MMC 20.
5. OFP receives an order to sell 10 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMB bids 2.04 for 10 contracts, MMC bids 2.04 for 10 contracts, MMA bids 2.04 for 10 contracts.	OFP 4 MMA 2 MMB 4 MMC 0	MMA 3 MMB 7 MMC 0	MMB 10. MMC 0. MMA 0.
6. OFP receives an order to sell 10 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMA bids 2.04 for 10 contracts, MMB bids 2.04 for 10 contracts, MMC bids 2.04 for 10 contracts.	OFP 4 MMA 2 MMA 4 (MMA total = 6; 2 ''Prime'' allocation + 4 time priority)	MMA 3 MMA 7 (MMA total = 10; 3 ''Prime'' allocation + 7 time priority)	MMA 10. MMB 0. MMC 0.

[66] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 19, *Market Maker Prime.*

[67] *See* proposed BOX Rules, Chapter V, *Doing Business on BOX,* Sec. 19, *Market Maker Prime.*

BOX—PIP TRADE ALLOCATION EXAMPLES—Continued

7. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP MMB bids 2.04 for 10 contracts, MMC bids 2.04 for 50 contracts, MMA bids 2.04 for 50 contracts.	OFP 40 MMA 20 MMB 10 MMC 30	MMA 33 MMB 10 MMC 30 MMA 17 (10 to bidder(s) at next highest PIP bid) (MMA total = 50; 33 ''Prime'' allocation + 17 time priority)	MMB 10. MMC 30. MMA 50. (10 to bidder(s) at next highest PIP bid)
8. OFP receives an order to sell 100 contracts and starts PIP with bid of 2.01 or better. In time priority in the PIP. MMB bids 2.05 for 10 contracts, MMC bids 2.04 for 30 contracts, and MMA bids 2.04 for 50 contracts.	MMB 10 at 2.05 OFP 36 at 2.04 MMA 18 at 2.04 MMC 30 at 2.04 MMA 6 at 2.04 (MMA total = 24; 18 ''Prime'' allocation + 6 time priority)	MMB 10 at 2.05 MMA 30 at 2.04 (1/3 of 90) MMC 30 at 2.04 MMA 20 at 2.04 (10 to bidder(s) at next highest PIP bid) (MMA total = 50; 30 ''Prime'' allocation + 20 time priority)	MMB 10 at 2.05. MMC 30. MMA 50. (10 to bidder(s) at next highest PIP bid).

e. Conclusion. In all, BOX has a market structure that would be ''flat and open,'' built on the price/time priority representation of all market participants' orders. These key ingredients, coupled with the low cost of entry, would offer liquidity, price quality and low cost for all market participants. Additionally, the Exchange is confident that there would be active Market Maker participation in BOX for several reasons:

(a) In order to ensure vigorous price competition in all cases, BOX would not begin trading any class of options unless there is a minimum of two Market Makers appointed to the class. As a result, Customer Orders would be subject to auctions potentially including at least three participants—the two Market Makers and the OFP submitting the Primary Improvement Order—assuring the possibility of a real, competitive auction process.[68]

(b) A Market Maker would be given dual incentives to quote the best price first on BOX: (1) To gain price/time priority for the entire size of his quote, and (2) to gain the Market Maker Prime trade allocation privileges in a PIP.

(c) The ability of Market Makers trading in the PIP to competitively price orders in finer increments than those generally employed in BOX would provide incentives for them to participate as Market Makers in the auction process.

(d) A Market Maker would have a high incentive for aggressively pricing an option for which a PIP is underway since there is an indisputable and immediate Customer interest in the option that is certain to result in a trade execution.

[68] Telephone conversation between Wayne Pestone, Bingham McCutchen LLP (outside counsel for the Exchange), and Deborah L. Flynn, Assistant Director, Division, Commission, on January 9, 2003.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under Section 6(b) of the Act,[69] in general, and furthers the objective of Section 6(b)(5) of the Act,[70] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[69] 15 U.S.C. 78f(b).

[70] 15 U.S.C. 78f(b)(5).

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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2002–15 and should be submitted by February 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[71]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1345 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

[71] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47188; File No. SR–CBOE–2003–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Board Options Exchange, Incorporated To Amend CBOE Rule 9.3A To Allow In-Firm Delivery of the Regulatory Element of Continuing Education

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 2003, The Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 9.3A, *Continuing Education for Registered Persons,* to permit the in-firm delivery of the Regulatory Element of Continuing Education by member organizations. Currently, this computer-based training is administered to registered persons by an outside vendor at its locations. The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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 CBOE proposes to permit member organization delivery of the Regulatory Element of the Continuing Education Program (''Program''). The Program is designed to keep industry participants up to date on products, services and rules, and is composed of a Regulatory Element and a Firm Element. The Regulatory Element is computer-based training that covers ethical, sales practice and regulatory matters, and requires that each registered person complete this training on the occurrence of their second registration anniversary date and every three years thereafter. A registered person who fails to complete the training will be deemed inactive, and may not conduct or be compensated for activities requiring registration. The Firm Element requires member and member organizations to provide to their registered employees having direct contact with customers ongoing training that is specifically tailored to their business.

At the recommendation of the Securities Industry/Regulatory Council on Continuing Education (''Council''),[5] the CBOE proposes to adopt amendments to CBOE Rule 9.3A to permit member organizations to administer the Regulatory Element of the Continuing Education Program to their registered persons by instituting firm programs acceptable to the Exchange. Currently, the Regulatory Element is administered only at vendor locations. The proposed rule requires that member organizations meet certain conditions for in-house delivery relating to the security of the training delivery environment. The proposed rule amendments set forth the delivery requirements as specified by the Council.

The proposed rule change is substantially similar to rules of The American Stock Exchange LLC, The New York Stock Exchange, Inc., and the National Association of Securities Dealers, Inc.[6]

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts and practices, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange also believes that the proposed rule change is consistent with Section 6(c)(3)(B) of the Act.[9] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. The Exchange has proposed this rule change to establish an additional mechanism for the administration of the Regulatory Element of the Program, which will help to enable registered persons to satisfy their continuing education obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The CBOE provided the Commission written notice of its intent to file the proposal on December 26, 2002.

[5] The Council is comprised of representatives from broker-dealers and self-regulatory organizations whose duties include recommending and helping develop specific content and questions for the Regulatory Element, as well as minimum core curricula for the Firm Element. The Council has developed a model under which member organizations may deliver the computer-based training in-house.

[6] The proposed rule change is identifical in substance, and substantially similar in wording, to Amex Rule 341A(4), NYSE Rule 345A, Interpretation /03, and NASD Rule 1120(a)(6).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(c)(3)(B).

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] 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 proposal 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 CBOE. All submissions should refer to file number SR–CBOE–2003–01 and should be submitted by February 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1346 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47190; File No. SR–CBOE–2002–62]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Proposing To Amend Interpretation .01(b)(2) and .05(d)(ii) to CBOE Rule 5.3 Which Establish the Pricing Criteria for Securities That Underlie Options Traded on the Exchange

January 15, 2003.

I. Introduction

On October 11, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Interpretation .01(b)(2) and .05(d)(ii) to CBOE Rule 5.3, which establish the pricing criteria for securities that underlie options traded on the Exchange. The proposed rule change was published for comment in the **Federal Register** on December 16, 2002.[3] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Interpretation .01(b)(2) to CBOE Rule 5.3 to provide that, for securities that underlie options traded on the Exchange (''underlying security'') that are deemed Covered Securities, as defined under section 18(b)(1)(A) of the Securities Act of 1933 (''1933 Act''),[4] the closing market price of the underlying security must be at least $3.00 per share for the five previous consecutive business days prior to the date on which CBOE submits an option class certification to the Options Clearing Corporation for listing and trading. For Underlying Securities that are not Covered Securities, the Exchange states that the current $7.50 price per share requirement would continue to apply. The market price of such underlying security would be measured by the closing price reported in the primary market in which the underlying security is traded. Finally, the Exchange proposes to amend Interpretation and Policy .05(d)(ii) to CBOE Rule 5.3 to reflect that the market price standard for Restructure Securities also shall be reduced from $7.50 to $3.00 as long as the Restructure Security is a Covered Security.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; facilitate transactions in securities, and protect investors and the public interest.

The Commission notes that although this proposal amends the closing market price for an underlying security which is deemed a Covered Security, as well as the time period for which it must trade at that price prior to it being listed on the Exchange, the CBOE has represented that it will continue to maintain its initial listing standards.[7] Therefore, an underlying security that is deemed a Covered Security must also meet CBOE's additional listing requirements prior to CBOE bringing up a new series of options to trade, including the requirements that: there must be a minimum of 7,000,000 shares of the underlying security owned by public investors; there must be a minimum of 2,000 holders of the underlying security; and, that there must be a trading volume of at least 2,400,000 shares in the preceding twelve months.[8] Accordingly, the Commission finds that the proposed rule change to require a closing market price of at least $3.00 per share for the five previous consecutive business days for underlying securities that are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46957 (December 6, 2002), 67 FR 77106.

[4] Section 18(b)(1)(A) of the 1933 Act provides that, ''[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market. * * *'' 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Interpretation .01(b)(2) to CBOE Rule 5.3 herein, would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] Telephone conversation between James Flynn, Attorney, CBOE, and Christopher Solgan, Attorney, Division of Market Regulation (''Division''), Commission, on January 14, 2002. *See also* Securities Exchange Act Release No. 46957, *supra* note 3.

[8] *See* CBOE Rule 5.3.

deemed Covered Securities, coupled with its additional listing requirements, will enable CBOE to list options on companies that are financially sound. Nonetheless, the Commission expects the Exchange to continue to delist inactive options classes, regardless of the market price of the underlying security, through its existing quarterly delisting program.[9]

Lastly, the Commission notes that each options exchange may currently list additional series on an option class even though the market price of the underlying security is below $3, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add new series, including the $3 price requirement.[10]

For these reasons, the Commission finds that the proposed rule change to provide that the closing market price of the underlying security must be at least $3.00 per share for the five previous consecutive business days for underlying securities that are deemed Covered Securities, is consistent with section 6(b)(5) of the Act.[11]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2002–62) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1347 Filed 1–21–03; 8:45 am]

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[9] CBOE states that it maintains an active delisting program which requires the quarterly review of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange. Telephone conversation between James Flynn, Attorney, CBOE, and Florence Harmon, Senior Special Counsel, Division, Commission, on January 14, 2002. *See also* Securities Exchange Act Release No. 46957, n. 7, *supra* note 3.

[10] *See* Interpretation and Policy .02 to CBOE Rule 5.4; Commentary .02 to American Stock Exchange LLC Rule 916; Commentary .01 to Pacific Exchange, Inc. Rule 3.7(b); Commentary .02 to Philadelphia Stock Exchange, Inc. Rule 1010; and International Securities Exchange, Inc. Rule 503(c).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47189; File No. SR–MSRB–2002–15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G–28, on Transactions With Employees and Partners of Other Municipal Securities Professionals

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''), and Rule 19b–4 thereunder,[1] notice is hereby given that on December 20, 2002 the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–2002–15). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed amendment to Rule G–28, on transactions with employees and partners of other municipal securities professionals (hereafter referred to as ''the proposed rule change''). Below is the text of the proposed rule change. New language is italicized; deletions are in brackets.

Rule G–28. Transactions With Employees and Partners of Other Municipal Securities Professionals

(a)–(b) No change.

(c) *Exemption for Municipal Fund Securities. The provisions of this rule shall not be applicable to transactions in municipal fund securities or to accounts that are limited to transactions in municipal fund securities.*

(a) Not applicable.

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the MSRB 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 below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Rule G–28, on transactions with employees and partners of other municipal securities professionals, requires a broker, dealer or municipal securities dealer (''dealer'') that opens a municipal securities account for an employee of another dealer (or a spouse or child of such employee) to first provide written notice to such other dealer and to subsequently follow any instructions provided by the other dealer with respect to transactions for the employee. The transacting dealer is also required to provide copies of all confirmations to the other dealer. The rule was adopted to prevent an employee of a dealer from effecting transactions that are contrary to the interests of the dealer or from otherwise acting illegally or improperly with respect to transactions in municipal securities.

As part of its ongoing review of the application of MSRB rules to municipal fund securities, it has come to the MSRB's attention that the requirements of Rule G–28 may impose a burden on dealers and customers, particularly in the context of 529 college savings plan accounts, without any significant countervailing benefit. The MSRB is concerned that the requirements unnecessarily delay the opening of some accounts since dealers are required to provide written notice to a dealer that employs a new customer prior to opening an account. However, since it does not appear that transactions in municipal fund securities present the same potential for adverse impact on an employing dealer as might exist with respect to transactions in other types of municipal securities, the MSRB does not believe that any benefit is realized from imposing the requirements of Rule G–28 on transactions in municipal fund securities.

Thus, the MSRB has determined that it is appropriate to create an exemption from Rule G–28 for transactions and accounts involving municipal fund securities. The MSRB notes that transactions in registered mutual fund shares are currently exempted from similar requirements imposed under NASD Rule 3050. In addition, since there is no trading market in shares of 529 college savings plans or other types

of municipal fund securities, the safeguards provided by Rule G–28 are not needed in the context of this market.

(2) Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Exchange Act, which authorizes the MSRB to adopt rules that shall: Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Exchange Act in that it amends an existing MSRB rule to better accommodate the unique characteristics of municipal fund securities, thereby removing impediments to a free and open market in such securities and promoting the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers effecting transactions in municipal fund securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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 submissions, 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 Board's offices. All submissions should refer to File No. SR–MSRB–2002–15 and should be submitted by February 12, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1348 Filed 1–21–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47181; File No. SR–NASD–2002–89]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Nasdaq's Listing Standards Pertaining to American Depositary Receipts, Preferred and Secondary Classes of Stock, Bid Price Compliance and Monitoring Periods, Categories of Securities Eligible for Initial Inclusion on Nasdaq, and the Market Capitalization Compliance Period

January 14, 2003.

On January 7, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to modify Nasdaq's listing standards pertaining to American Depositary Receipts, preferred and secondary classes of stock, bid price compliance and monitoring periods, categories of securities eligible for initial inclusion on Nasdaq, and the market capitalization compliance period. On November 1, 2002, NASD filed Amendment No. 1 to the proposed rule change.[1] On December 2, 2002, NASD filed Amendment No. 2 to the proposed rule change.[2] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on December 9, 2002.[3] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[4] The Commission finds that the proposal is consistent with the requirements of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the proposal should provide greater transparency and consistency to Nasdaq's listing standards.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2002–89) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1349 Filed 1–21–03; 8:45 am]

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[2] 17 CFR 200.30–3(a)(12).

[1] *See* letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated November 1, 2002.

[2] *See* letter from John Nachmann, Senior Attorney, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2002.

[3] *See* Securities Exchange Act Release No. 46940 (December 3, 2002), 67 FR 72998.

[4] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o(b)(6).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47172; File No. SR–NSCC–2002–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Technical Correction to an NSCC Rule

January 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], notice is hereby given that on November 13, 2002, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to correct a typographical error in NSCC rule 50.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to correct a typographical error in NSCC rule 50. On June 5, 1998, NSCC filed a proposed rule change regarding the redesign of its Automated Customer Account Transfer Service (''ACAT'').[3] In Exhibit A to that rule filing, there was a typographical error in rule 50 section (i)(3) that inadvertently referenced sec. 15. Reference should have been made to section 14.

The proposed rule change is consistent with the requirements of section 17A of the Act because it clarifies the meaning of NSCC rule 50 by correcting the typographical error.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[4] and rule 19b–4(f)(1)[5] thereunder because the proposed rule change constitutes an interpretation with respect to the meaning of an existing rule. At any time within 60 days of the filing of such 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2002–12. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–2002–12 and should be submitted by February 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1289 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47180; File No. SR–NSCC–2002–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying Addendum B of NSCC's Rules and Procedures

January 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 13, 2002, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. 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 proposed rule change eliminates all references to Class I and Class II security surveillance in Addendum B of NSCC's Rules and Procedures.

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 40657 (November 10, 1998), 63 FR 63952 (November 17, 1998)(File No. SR–NSCC–98–06)(order approving changes made to the ACAT service).

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to modify Versions 1 and 2 of Addendum B, Standards of Financial Responsibility and Operational Capability, of NSCC's Rules and Procedures to eliminate all references to Class I and Class II security surveillance, as NSCC does not place securities on surveillance status.

The proposed rule change accurately reflects the functions performed by NSCC and constitutes a stated practice with respect to the administration and enforcement of an existing rule; therefore, NSCC believes it is consistent with the provisions of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1)[4] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. At any time within sixty 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NSCC–2002–11. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR–NSCC–2002–11 and should be submitted by February 12, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1350 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified parts of these statements.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 47178; File No. SR–PCX–2002–74]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Rule Change Proposed by the Pacific Stock Exchange, Inc. Relating to Two New Order Types on the Archipelago Exchange

January 13, 2003.

On December 9, 2002, the Pacific Stock Exchange, Inc. (''PCX'') filed a proposed rule change with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder[2] to adopt two new order types, an Immediate-or-Cancel (''IOC'') Cross Order and a Post No Preference (''PNP'') Cross Order, on its equities trading facility, the Archipelago Exchange (''ArcaEx''). The PCX also proposed to allow the new order types to be subject to the recent *de minimis* exemption from the trade-through restrictions of the Intermarket Trading System Plan in certain exchange-traded funds.[3]

The Commission published notice of the proposed rule change for comment in the **Federal Register** on December 24, 2002.[4] The Commission received no public comments with respect to the proposal. This order grants accelerated approval to the PCX's proposed rule change.

The PCX requested that the Commission grant accelerated approval to the proposed rule change pursuant to section 19(b)(2) of the Act[5] so that the PCX may implement the new order types before the 30th day after publication of the notice in the **Federal Register**. The PCX represented that the proposed IOC Cross and PNP Cross order types would promote a more efficient and effective market operation and enhance the investment choices available to investors in the handling of their orders. Moreover, with respect to the proposal to amend PCXE rule 7.37, the PCX believes that the proposed rule change would allow market participants to take full advantage of the *de minimis*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) (Order of the Commission pursuant to section 11A of Act).

[4] *See* Securities Exchange Act Release No. 47010 (December 16, 2002), 67 FR 78554 (December 24, 2002). The 15-day comment period ran through January 8, 2003.

[5] 15 U.S.C. 78s(b)(2).

exception to the ITS Plan's trade-through rule.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[7] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with person engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Commission also finds good cause to approve the proposed rule change before the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that the proposed change to PCXE rule 7.37 is consistent with the terms and spirit of the *de minimis* exemption from the trade-through restrictions of the ITS Plan, and will allow market participants to further benefit from this exemption. The Commission believes that the proposed IOC Cross and PNP Cross order types will promote an efficient and effective market operation and will offer investors additional choices in the handling of their orders. Accelerated approval of the proposal will make the proposed order types available to investors more quickly and without undue delay. Accordingly, the Commission finds it appropriate to approve the proposed rule change before the 30th day after the date of publication in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PCX–2002–74) is hereby approved and shall become effective immediately.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1290 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

[6] In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47166; File No. SR–Phlx–2002–61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Amend Options Floor Procedure Advice A–13 To Include Violations for Failure To Obtain Approval To Disengage the NBBO Feature in the Exchange's Minor Rule Plan

January 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 4, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 7, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to amend Phlx Option Floor Procedure Advice (''OFPA'') A–13, Auto Execution Engagement/Disengagement Responsibility, to include violations for failure to obtain the necessary approvals prior to disengagement of the Exchange's NBBO Step-Up Feature. The text of the proposed rule change is set forth below. Proposed new text is italicized; deleted language is in brackets.

A–13 Auto Execution Engagement/Disengagement Responsibility (EQUITY OPTION AND INDEX OPTION ONLY)

(*a*) It is the responsibility of the option Specialist to engage the Auto Execution (Auto-X) system for an assigned option within three (3) minutes of completing the opening or reopening rotation of that option.

Where extraordinary circumstances occur, a Specialist may be provided an exemption from receiving orders through Auto–X and may then disengage the system upon approval by two Floor Officials. Five minutes subsequent to the disengagement of AUTO–X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO–X is disengaged), the requesting Specialist [of] *or* his/her designee, two Floor Officials, and a designated surveillance staff person, shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO–X will be re-engaged with either: (i) Specialist [of] *or* his/her designee determines that the conditions supporting the extraordinary circumstances no longer exist, at which time the Specialist or his/her designee shall inform the Market Surveillance staff that the extraordinary circumstances no longer exist and that the Specialist is re-engaging AUTO–X; or (ii) when two Floor Officials and the designated surveillance staff person determine that the conditions supporting the extraordinary circumstances no longer exist. In the event extraordinary circumstances exist floor-wide, two Exchange Floor Officials and the Chairperson of the Options Committee or his/or her designee may determine to disengage the AUTO–X feature floor-wide. Five minutes subsequent to a floor-wide disengagement of AUTO–X for extraordinary circumstances (and every 15 minutes thereafter as long as AUTO–X is disengaged), two Floor Officials, the Chairperson of the Options Committee or his/her designee and a designated Market Surveillance staff person shall re-evaluate the circumstances to determine if the extraordinary circumstances still exist. AUTO-X will be re-engaged when either[;]*:* (1) the Specialist determines that the conditions supporting the extraordinary circumstances no longer exist for their particular class of options at which time the Specialist or his/her designee will inform Market Surveillance staff that the extraordinary circumstances no longer exist for their particular class of options and that the Specialist is re-engaging AUTO–X; or (2) when two Floor Officials, the Chairperson of the Options Committee or his/her designee and the designated Market Surveillance staff person determine that the extraordinary circumstances no longer exist. The NBBO feature is always disengaged when AUTO–X is disengaged.

Extraordinary circumstances include market occurrences and system malfunctions that impact a Specialist's ability to accurately price and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See letter from Rick Rudolph, Director and Counsel, Phlx, to Jennifer Lewis, Commission, dated November 6, 2002 (''Amendment No. 1''). In Amendment No. 1, Phlx fixed nonsubstantive typographical errors in its rule text, and added a cross-reference to Phlx Rule 960.2 in the purpose section of its proposal.

disseminate option quotations in a timely manner. Such occurrences include fast market conditions such as volatility, order imbalances, volume surges or significant price variances in the underlying security; internal system malfunctions including the Exchange's Auto-Quote system; or malfunctions of external systems such as a specialized quote feed, or delays in the dissemination of quotes from the Option Price Reporting Authority; or other similar occurrences.

The Exchange shall document any action taken to disengage AUTO–X pursuant to this Rule 1080(e), and shall notify all AUTOM Users of each instance in which AUTO–X is disengaged due to extraordinary circumstances. Such documentation shall include: identification of the option(s) affected by such action (except in a case of floor-wide disengagement); the date and time such action was taken and concluded; identification of the Floor Officials who approved such action; the reasons for which such action was taken; identification of the Specialist and the Specialist Unit (or in the case of floor-wide disengagement, identification of the Options Committee Chairperson or his/her designee); and identification of the Market Surveillance staff person monitoring the situation. The Exchange will maintain these documents pursuant to the record retention requirement of the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(b) AUTO–X on the NBBO. AUTO–X on the NBBO (the ''NBBO Feature'') is a feature of AUTOM that automatically executes at the National Best Bid or Offer (''NBBO''). The NBBO Feature will execute AUTO–X eligible orders at the NBBO for certain options designated by the Options Committee as eligible for the NBBO Feature (''automatic step-up options''), provided that the NBBO does not differ from the specialist's best bid or offer by more than the ''step-up parameter.''

(i) The ''step-up parameter'' for automatic step-up options shall be the minimum trading increment for options in that series established pursuant to Exchange Rule 1034, or any greater amount established by the Options Committee in respect of specified automatic step-up options or series of options.

(ii) The Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) may determine to disengage the NBBO Feature for orders in certain automatic step-up options after notice to AUTOM users in situations in which the Exchange is experiencing communications or systems problems; fast markets; or delays in the dissemination of quotes because of queues on the Options Price Reporting Authority (''OPRA''), which would likely render such quotes stale. Where the NBBO Feature is disengaged, such orders shall be executed manually in accordance with Exchange rules.

(iii) In respect of automatic step-up options (1) where the specialist's best bid or offer is inferior to the current best bid or offer in another market by more than the step-up parameter; or (2) where the NBBO for one of the series of automatic step-up options is crossed (i.e., 2.10 bid, 2 asked) or locked (i.e., 2 bid, 2 asked); or (3) in respect of equity options other than automatic step-up options where the specialist's best bid or offer is inferior to the current best bid or offer in another market by any amount, such orders shall be executed manually in accordance with Exchange rules. There may be circumstances in which the specialist's best bid or offer is inconsistent with the Exchange's best bid or offer. In such a circumstance, such an order shall be executed manually.

(iv) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) determines that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule, as defined in Exchange Rule 1082(a)(iii) (the ''Quote Rule''), customer market orders will receive an automatic execution at the NBBO based on the best bid or offer in markets whose quotes are not subject to relief from the firm quote requirement set forth in the Quote Rule. Such determination may be made by way of notification from another market that its quotes are not firm or are unreliable; administrative message from the Option Price Reporting Authority (''OPRA''); quotes received from another market designated as ''not firm'' using the appropriate indicator; and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are not firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are excluded from the calculation of NBBO. The Exchange may determine to exclude quotes from its calculation of NBBO on a series-by-series basis or issue-by-issue basis, or may determine to exclude all options quotes from an exchange, where appropriate. The Exchange shall maintain a record of each instance in which another exchange's quotes are excluded from the Exchange's calculation of NBBO, and shall notify such other exchange that its quotes have been so excluded. Such documentation shall include: identification of the option(s) affected by such action; the date and time such action was taken and concluded; identification of the other exchange(s) whose quotes were excluded from the Exchange's calculation of NBBO; identification of the Chairman of the Options Committee, his designee, or two Floor Officials (as applicable) who approved such action; the reasons for which such action was taken; and identification of the specialist and the specialist unit. The Exchange will maintain these documents pursuant to the record retention requirements of the Securities Exchange Act of 1934 and the rule and regulations thereunder.

(v) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or another market or markets previously subject to relief from the firm quote requirement set forth in the Quote Rule are no longer subject to such relief, such quotations will be included in the calculation of NBBO for such options. Such determination may be made by way of notification from another market that its quotes are firm; administrative message from the Option Price Reporting Authority (''OPRA''); and/or telephonic or electronic inquiry to, and verification from, another market that its quotes are firm. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.

Fine Schedule (Implemented on a one-year running basis).

(a) Failure to engage Auto-X:
- 1st Occurrence $500.00
- 2nd Occurrence $1,000.00
- 3rd Occurrence $2,000.00
- 4th Occurrence and Thereafter Sanction is discretionary with Business Conduct Committee

(b) Failure to receive approval to disengage Auto-X:
- 1st Occurrence $250.00
- 2nd Occurrence $500.00
- 3rd Occurrence $1,000.00
- 4th Occurrence and Thereafter Sanction is discretionary with Business Conduct Committee

(c) Failure to receive approval to disengage NBBO Feature:
- 1st Occurrence $250.00
- 2nd Occurrence $500.00
- 3rd Occurrence $1,000.00
- 4th Occurrence and Thereafter

Sanction is discretionary with Business Conduct Committee

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 amend OFPA A–13 to include in the Exchange's minor rule violation enforcement and reporting plan (''Minor Rule Plan'') [4] violations for failure to receive approval to disengage the National Best Bid/Best Offer (''NBBO'') Feature of the Exchange's Automated Options Market System (''AUTOM'').[5] The NBBO Feature automatically executes orders at the NBBO for certain options designated by the Phlx's Options Committee as eligible for the NBBO Feature (''automatic step-up options''), provided that the NBBO does not differ from the specialist's bid or offer by more than the ''step up parameter.'' [6] Currently, engagement and disengagement of the NBBO Feature is governed solely by Phlx Rule 1080(c)(i), and violations are referred to the Business Conduct Committee (''BCC'').

With regard to the manner in which a specialist must obtain approval to disengage the NBBO Feature, Phlx Rule 1080(c)(i) provides that the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) may determine to disengage the NBBO Feature for orders in certain automatic step-up options after notice to AUTOM users in certain situations set forth in the Rule. There is, however, no current corresponding OFPA providing a fine schedule for violations of the section of the Rule requiring approval to disengage the NBBO Feature. Thus, violations of Rule 1080(c)(i) currently are investigated by the Exchange's Market Surveillance Department (''Market Surveillance''), and referred by the Exchange's Enforcement Department (''Enforcement'') to the BCC.

After receiving a referral from Enforcement, the BCC considers the matter and may determine to issue a statement of charges.[7] This action is reportable on a member's Form U–4 or member organization's Form BD because it is a disciplinary action. By adopting a fine schedule under the Minor Rule Plan, the Exchange can issue fines for relatively minor infractions without the need for formal disciplinary action.

Accordingly, the Exchange proposes to amend OFPA A–13 to restate from Phlx Rule 1080(c)(i) the conditions for using the NBBO Feature, including the requirement to obtain approval to disengage the NBBO Feature, and to include a fine schedule for failure to obtain such approval. Specifically, the proposed fine schedule is as follows: first occurrence, $250; second occurrence, $500; third occurrence, $1,000; fourth occurrence and thereafter, sanction discretionary with the BCC. The proposed fine schedule would be implemented on a one-year running basis. The BCC also would have discretion concerning sanctions for any violations should they be deemed egregious by Enforcement and referred directly to the BCC pursuant to Exchange Rule 960.2.

The Exchange believes it is appropriate to include in its Minor Rule Plan violations of the approval requirement for disengagement of the NBBO Feature. The Exchange's Minor Rule Plan is designed to provide a prompt response to a violation of Exchange rules when a meaningful sanction is needed, but initiation of a disciplinary proceeding pursuant to Phlx Rule 960.2 is not suitable because such a proceeding would be more costly and time consuming than would be warranted given the nature of the violation.[8] Therefore, inclusion in the Minor Rule Plan of violations of the NBBO Feature disengagement approval requirement should make the Exchange's disciplinary system more efficient. If the Exchange determines that a violation of Phlx Rule 1080(c)(i) or OFPA A–13, as amended, is not minor in nature, the Exchange may initiate full disciplinary proceedings in accordance with Phlx Rule 960.2.

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with section 6 of the Act,[9] in general, and with section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by including violations of the approval requirement for disengagement of the NBBO Feature in its Minor Rule Plan, thus providing for the more efficient operation of its disciplinary system. In addition, the Exchange believes the proposal is consistent with section 6(b)(6) of the Act,[11] which requires that the rules of an exchange provide that its members be appropriately disciplined for violation of exchange rules, the Act, and the rules and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

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.

[4] The Exchange's Minor Rule Plan, codified in Exchange Rule 970, includes Floor Procedure Advices with accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorizes National Securities Exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting. 17 CFR 240.19d–1(c)(2). Rule 19d–1(c)(2) requires prompt filing with the Commission of any final disciplinary action. However, fines for minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[5] 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.

[6] For a complete description of the NBBO Feature, *see* Securities Exchange Act Release No. 43684 (December 6, 2000), 65 FR 78237 (December 14, 2000) (order partially approving SR–Phlx–00–93).

[7] *See* Phlx Rule 960.3. The BCC could also determine that a less formal sanction, such as a letter of caution, is appropriate.

[8] Phlx Rule 960.2 governs the initiation of disciplinary proceedings by the Exchange for violations within the disciplinary jurisdiction of the Exchange.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 Phlx. All submissions should refer to File No. SR–Phlx–2002–61 and should be submitted by February 12, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–1288 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of promulgation of temporary, emergency amendments to the sentencing guidelines and commentary.

SUMMARY: The Commission has promulgated two temporary, emergency amendments to the sentencing guidelines as follows: (1) pursuant to sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, and its general authority under 28 U.S.C. 994, the Commission has promulgated amendments to §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States), 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act), 2J1.2 (Obstruction of Justice), and 2T4.1 (Tax Table), and Appendix A (Statutory Index); and (2) pursuant to section 314 of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, and its general authority under 28 U.S.C. 994, the Commission has promulgated a new guideline in chapter two, part C (Offenses Involving Public Officials), and amendments to §§ 3D1.2 (Groups of Closely Related Counts), and 5E1.2 (Fines for Individual Defendants), and Appendix A (Statutory Index). The Commission also has requested public comment, to be submitted to the Commission not later than March 17, 2003, regarding repromulgation of these two temporary, emergency amendments as permanent amendments (*see* the issue of the **Federal Register** published on January 17, 2003).

DATES: The Commission has specified an effective date of January 25, 2003, for the temporary, emergency amendments set forth in this notice.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May of each year pursuant to 28 U.S.C. 994(p). The Commission also may promulgate emergency amendments prior to the first day of May if required to do so by specific congressional legislation.

The Commission has promulgated two temporary, emergency guidelines in response to specific congressional legislation. First, in response to the Sarbanes-Oxley Act, the Commission has promulgated an amendment that increases the penalties for corporate fraud and offenses involving the obstruction of justice. Second, in response to the Bipartisan Campaign Reform Act of 2002, the Commission has promulgated an amendment that provides a new guideline and increased penalties for offenses involving a violation of Federal election campaign laws. The Commission has specified an effective date of January 25, 2003, for both amendments.

Additional information pertaining to the amendments described in this notice may be accessed through the Commission's website at *www.ussc.gov.*

Authority: Sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204; section 314 of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155; 28 U.S.C. 994(a), (o), (p), (x); USSC rules of practice and procedure, rule 4.4.

Diana E. Murphy,

Chair.

1. Corporate Fraud

Amendment: Section 2B1.1(b)(1) is amended by striking the period; and by adding at the end the following:

''(O) More than $200,000,000 add 28
(P) More than $400,000,000 add 30.''.

Section 2B1.1 is amended by striking subsection (b)(2) as follows:

''(2) (Apply the greater) If the offense—

(A) (i) involved more than 10, but less than 50, victims; or (ii) was committed through mass-marketing, increase by 2 levels; or

(B) involved 50 or more victims, increase by 4 levels.'',

and inserting the following:

''(2) (Apply the greatest) If the offense—

(A) (i) involved 10 or more victims; or (ii) was committed through mass-marketing, increase by 2 levels;

(B) involved 50 or more victims, increase by 4 levels; or

(C) involved 250 or more victims, increase by 6 levels.''.

Section 2B1.1 is amended by striking subsection (b)(12)(B) as follows:

''(B) the offense substantially jeopardized the safety and soundness of a financial institution, increase by 4 levels.'',

and inserting the following:

''(B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; (ii) substantially endangered the solvency or financial security of an organization that, at any time during the offense, (I) was a publicly traded company; or (II) had 1,000 or more employees; or (iii) substantially endangered the solvency or financial security of 100 or more victims, increase by 4 levels.''.

Section 2B1.1(b) is amended by adding at the end the following:

''(13) If the offense involved a violation of securities law and, at the time of the offense, the defendant was an officer or a director of a publicly traded company, increase by 4 levels.''.

The Commentary to § 2B1.1 captioned ''Statutory Provisions'' is amended by inserting ''1348, 1350,'' after ''1341–1344,''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 1 by adding after ''Resources).'' the following new paragraph:

'' 'Equity securities' has the meaning given that term in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(11)).'';

by inserting after ''Secretary of the Interior.'' the following new paragraph:

'' 'Publicly traded company' means an issuer (A) with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or (B) that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)). 'Issuer' has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).'';

and by adding at the end the following:

'' 'Victim' means (A) any person who sustained any part of the actual loss determined under subsection (b)(1); or (B) any individual who sustained bodily injury as a result of the offense. 'Person' includes individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 2(C) by redesignating subdivision (iv) as (v); and by adding after subdivision (iii) the following new subdivision:

''(iv) The reduction that resulted from the offense in the value of equity securities or other corporate assets.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3 by striking ''Victim and Mass-Marketing Enhancement under'' in the heading and inserting ''Application of''; by striking subdivision (A) as follows:

''(A) Definitions.—For purposes of subsection (b)(2):

(i) 'Mass-marketing' means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (I) purchase goods or services; (II) participate in a contest or sweepstakes; or (III) invest for financial profit. 'Mass-marketing' includes, for example, a telemarketing campaign that solicits a large number of individuals to purchase fraudulent life insurance policies.

(ii) 'Victim' means (I) any person who sustained any part of the actual loss determined under subsection (b)(1); or (II) any individual who sustained bodily injury as a result of the offense. 'Person' includes individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.'',

and inserting the following:

''(A) Definition.—For purposes of subsection (b)(2), 'mass-marketing' means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (i) purchase goods or services; (ii) participate in a contest or sweepstakes; or (iii) invest for financial profit. 'Mass-marketing' includes, for example, a telemarketing campaign that solicits a large number of individuals to purchase fraudulent life insurance policies.'';

in subdivision (B)(i)(I) by striking ''described in subdivision (A)(ii) of this note;'' and inserting ''any victim as defined in Application Note 1;'';

in subdivision (B)(ii)(IV) by inserting ''at least'' after ''to have involved''; and in subdivision (C) by inserting ''or (C)'' after ''(B)''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by redesignating Notes 11 through 15 as Notes 12 through 16, respectively.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by striking Note 10 as follows:

''10. Enhancement for Substantially Jeopardizing the Safety and Soundness of a Financial Institution under Subsection (b)(12)(B).—For purposes of subsection (b)(12)(B), an offense shall be considered to have substantially jeopardized the safety and soundness of a financial institution if, as a consequence of the offense, the institution (A) became insolvent; (B) substantially reduced benefits to pensioners or insureds; (C) was unable on demand to refund fully any deposit, payment, or investment; (D) was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or (E) was placed in substantial jeopardy of any of subdivisions (A) through (D) of this note.'',

and inserting the following:

''10. Application of Subsection (b)(12)(B).—

(A) Application of Subsection (b)(12)(B)(i).—The following is a non-exhaustive list of factors that the court shall consider in determining whether, as a result of the offense, the safety and soundness of a financial institution was substantially jeopardized:

(i) The financial institution became insolvent.

(ii) The financial institution substantially reduced benefits to pensioners or insureds.

(iii) The financial institution was unable on demand to refund fully any deposit, payment, or investment.

(iv) The financial institution was so depleted of its assets as to be forced to merge with another institution in order to continue active operations.

(B) Application of Subsection (b)(12)(B)(ii).—

(i) Definition.—For purposes of this subsection, 'organization' has the meaning given that term in Application Note 1 of § 8A1.1 (Applicability of chapter Eight).

(ii) In General.—The following is a non-exhaustive list of factors that the court shall consider in determining whether, as a result of the offense, the solvency or financial security of an organization that was a publicly traded company or that had more than 1,000 employees was substantially endangered:

(I) The organization became insolvent or suffered a substantial reduction in the value of its assets.

(II) The organization filed for bankruptcy under chapters 7, 11, or 13 of the Bankruptcy Code (title 11, United States Code).

(III) The organization suffered a substantial reduction in the value of its equity securities or the value of its employee retirement accounts.

(IV) The organization substantially reduced its workforce.

(V) The organization substantially reduced its employee pension benefits.

(VI) The liquidity of the equity securities of a publicly traded company was substantially endangered. For example, the company was delisted from its primary listing exchange, or trading of the company's securities was halted for more than one full trading day.

11. Application of Subsection (b)(13).—

(A) Definition.—For purposes of this subsection, 'securities law' (i) means 18 U.S.C. 1348, 1350, and the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)); and (ii) includes the rules, regulations, and orders issued by the Securities and Exchange Commission pursuant to the provisions of law referred to in such section.

(B) In General.—A conviction under a securities law is not required in order for subsection (b)(13) to apply. This subsection would apply in the case of a defendant convicted under a general fraud statute if the defendant's conduct violated a securities law. For example, this subsection would apply if an officer of a publicly traded company violated regulations issued by the Securities and Exchange Commission by fraudulently influencing an independent audit of the company's financial statements for the purposes of rendering such financial statements materially misleading, even if the officer is convicted only of wire fraud.

(C) Nonapplicability of § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).—If subsection (b)(13) applies, do not apply § 3B1.3.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 16, as redesignated by this amendment, by striking subdivision (v) as follows:

''(v) The offense endangered the solvency or financial security of one or more victims.'';

and by redesignating subdivisions (vi) and (vii) as subdivisions (v) and (vi), respectively.

The Commentary to § 2B1.1 captioned ''Background'' is amended in the last paragraph by inserting ''(i)'' after ''(B)''.

Section 2E5.3 is amended in the heading by adding at the end ''; Destruction and Failure to Maintain Corporate Audit Records''.

Section 2E5.3 is amended by striking subsection (a)(2) as follows:

''(2) If the offense was committed to facilitate or conceal a theft or embezzlement, or an offense involving a bribe or a gratuity, apply § 2B1.1 or § 2E5.1, as applicable.'',

and inserting the following:

''(2) If the offense was committed to facilitate or conceal (A) an offense involving a theft, a fraud, or an embezzlement; (B) an offense involving a bribe or a gratuity; or (C) an obstruction of justice offense, apply § 2B1.1 (Theft, Property Destruction, and Fraud), § 2E5.1 (Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations), or § 2J1.2 (Obstruction of Justice), as applicable.''.

The Commentary to § 2E5.3 captioned ''Statutory Provisions'' is amended by inserting ''§'' before ''1027''; and by inserting '', 1520'' after ''1027''.

Section 2J1.2(a) is amended by striking ''12'' and inserting ''14''.

Section 2J1.2(b) is amended by adding at the end the following:

''(3) If the offense (A) involved the destruction, alteration, or fabrication of a substantial number of records, documents, or tangible objects; (B) involved the selection of any essential or especially probative record, document, or tangible object, to destroy or alter; or (C) was otherwise extensive in scope, planning, or preparation, increase by 2 levels.''.

The Commentary to § 2J1.2 captioned ''Statutory Provisions'' is amended by inserting '', 1519'' after ''1516''.

Section 2T4.1 is amended in the table by striking the period and adding at the end the following:

''(O) More than $200,000,000	34
(P) More than $400,000,000	36.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1347 the following new lines:

''18 U.S.C. 1348	2B1.1
18 U.S.C. 1349	2X1.1
18 U.S.C. 1350	2B1.1''.

Appendix A (Statutory Index) is amended in the line referenced to 18 U.S.C. 1512(c) by striking ''(c)'' and inserting ''(d)''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1512(b) the following new line:

''18 U.S.C. 1512(c)	2J1.2''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 1518 the following new lines:

''18 U.S.C. 1519	2J1.2
18 U.S.C. 1520	2E5.3''.

Reason for Amendment: This amendment implements directives to the Commission contained in sections 805, 905, and 1104 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204 (the ''Act''), by making several modifications to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) and § 2J1.2 (Obstruction of Justice). The directives pertain to serious fraud and related offenses and obstruction of justice offenses. The directives require the Commission under emergency amendment authority to promulgate amendments addressing, among other things, officers and directors of publicly traded companies who commit fraud and related offenses, fraud offenses that endanger the solvency or financial security of a substantial number of victims, fraud offenses that involve significantly greater than 50 victims, and obstruction of justice offenses that involve the destruction of evidence.

First, the amendment addresses the directive contained in section 1104(b)(5) of the Act to ''ensure that the guideline offense levels and enhancements under United States Sentencing Guideline § 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50.'' The amendment implements this directive by expanding the existing enhancement at § 2B1.1(b)(2) based on the number of victims involved in the offense. Prior to the amendment, subsection (b)(2) provided a two level enhancement if the offense involved more than 10, but less than 50, victims (or was committed through mass-marketing), and a four level enhancement if the offense involved 50 or more victims. The amendment provides an additional two level increase, for a total of six levels, if the offense involved 250 or more victims. The Commission determined that an enhancement of this magnitude appropriately responds to the pertinent directive and reflects the extensive nature of, and the large scale victimization caused by, such offenses.

Second, the amendment addresses directives contained in sections 805 and 1104 of the Act pertaining to securities and accounting fraud offenses and fraud offenses that endanger the solvency or financial security of a substantial number of victims. Specifically, section 805(a)(4) directs the Commission to ensure that ''a specific offense characteristic enhancing sentencing is provided under United States

Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims.'' In addition, section 1104(b)(1) directs the Commission to ''ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses.'' The amendment implements these directives by expanding the scope of the existing enhancement at § 2B1.1(b)(12)(B).

Prior to the amendment, § 2B1.1(b)(12)(B) provided a four level enhancement and a minimum offense level of 24 if the offense substantially jeopardized the safety and soundness of a financial institution. The amendment expands the scope of this enhancement by providing two additional prongs. The first prong applies to offenses that substantially endanger the solvency or financial security of an organization that, at any time during the offense, was a publicly traded company or had 1,000 or more employees. The addition of this prong reflects the Commission's determination that such an offense undermines the public's confidence in the securities and investment market much in the same manner as an offense that jeopardizes the safety and soundness of a financial institution undermines the public's confidence in the banking system. This prong also reflects the likelihood that an offense that endangers the solvency or financial security of an employer of this size will similarly affect a substantial number of individual victims, without requiring the court to determine whether the solvency or financial security of each individual victim was substantially endangered.

A corresponding application note for § 2B1.1(b)(12)(B) sets forth a non-exhaustive list of factors that the court shall consider in determining whether the offense endangered the solvency or financial security of a publicly traded company or an organization with 1,000 or more employees. The list of factors includes references to insolvency, filing for bankruptcy, substantially reducing the value of the company's stock, and substantially reducing the company's workforce among the list of factors that the court shall consider when applying the new enhancement, and other factors not enumerated in the application note could be considered by the court as appropriate.

The amendment also modifies the application note of the previously existing prong of § 2B1.1(b)(12)(B), the financial institutions enhancement, to be consistent structurally with the new prongs of the enhancement. Prior to the amendment, the presence of any one of the factors enumerated in the application note would trigger the financial institutions enhancement under § 2B1.1(b)(12)(B). Under the amendment, the application note to the financial institutions enhancement sets forth a non-exhaustive list of factors that the court shall consider in determining whether the offense substantially jeopardized the safety and soundness of a financial institution. The list of factors that the court shall consider when applying this enhancement includes references to insolvency, substantially reducing benefits to pensioners and insureds, and an inability to refund fully any deposit, payment, or investment on demand.

The second prong added to § 2B1.1(b)(12)(B) by the amendment applies to offenses that substantially endangered the solvency or financial security of 100 or more victims, regardless of whether a publicly traded company or other organization was affected by the offense. The Commission concluded that the specificity of the directive in section 805(a)(4) required an enhancement focused specifically on conduct that endangers the financial security of individual victims. Thus, use of this prong of the enhancement will be appropriate in cases in which there is sufficient evidence for the court to determine that the amount of loss suffered by individual victims of the offense substantially endangered the solvency or financial security of those victims. The Commission also determined that the enhancement provided in § 2B1.1(b)(12)(B) shall apply cumulatively with the enhancement at § 2B1.1(b)(2), which is based solely on the number of victims involved in the offense, to reflect the particularly acute harm suffered by victims of offenses for which the new prongs of subsection (b)(12)(B) apply.

Third, the amendment addresses the directive contained at section 1104(a)(2) of the Act to ''consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses.'' The amendment implements this directive by providing a new, four level enhancement at § 2B1.1(b)(13) that applies if the offense involved a violation of securities law and, at the time of the offense, the defendant was an officer or director of a publicly traded company. The Commission concluded that a four level enhancement appropriately reflects that an officer or director of a publicly traded company who commits such an offense violates certain heightened fiduciary duties imposed by securities law upon such individuals. Accordingly, the court is not required to determine specifically whether the defendant abused a position of trust in order for the enhancement to apply, and a corresponding application note provides that, in cases in which the new, four level enhancement applies, the existing two level enhancement for abuse of position of trust at § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) shall not apply.

The corresponding application note also expressly provides that the enhancement would apply regardless of whether the defendant was convicted under a specific securities fraud statute (*e.g.*, 18 U.S.C. 1348, a new offense created by the Act specifically prohibiting securities fraud) or under a general fraud statute (*e.g.*, 18 U.S.C. 1341, prohibiting mail fraud), provided that the offense involved a violation of ''securities law'' as defined in the application note.

Fourth, the amendment expands the loss table at § 2B1.1(b)(1) to punish adequately offenses that cause catastrophic losses of magnitudes previously unforeseen, such as the serious corporate scandals that gave rise to several portions of the Act. Prior to the amendment, the loss table at § 2B1.1(b)(1) provided sentencing enhancements in two level increments up to a maximum of 26 levels for offenses in which the loss exceeded $100,000,000. The amendment adds two additional loss amount categories to the table; an increase of 28 levels for offenses in which the loss exceeded $200,000,000, and an increase of 30 levels for offenses in which the loss exceeded $400,000,000. These additions to the loss table address congressional concern regarding particularly extensive and serious fraud offenses, and more fully effectuate increases in statutory maximum penalties provided by the Act (*e.g.*, the increase in the statutory maximum penalties for wire fraud and mail fraud offenses from five to 20 years set forth in section 903 of the Act). The amendment also modifies the tax table in § 2T4.1 in a similar manner to maintain the longstanding proportional relationship between the loss table in § 2B1.1 and the tax table.

The amendment also adds a new factor to the general, enumerated factors that the court may consider in determining the amount of loss under § 2B1.1(b)(1). Specifically, the amendment adds the reduction in the

value of equity securities or other corporate assets that resulted from the offense to the list of general factors set forth in Application Note 2(C) of § 2B1.1. This factor was added to provide courts additional guidance in determining loss in certain cases, particularly in complex white collar cases.

Fifth, the amendment modifies § 2J1.2 to address the directives pertaining to obstruction of justice offenses contained in sections 805 and 1104 of the Act. Specifically, section 805(a) of the Act directs the Commission to ensure that the base offense level and existing enhancements in § 2J1.2 are sufficient to deter and punish obstruction of justice offenses generally, and specifically are adequate in cases involving the destruction, alteration, or fabrication of a large amount of evidence, a large number of participants, the selection of evidence that is particularly probative or essential to the investigation, more than minimal planning, or abuse of a special skill or a position of trust. Section 1104(b) of the Act further directs the Commission to ensure that the ''guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated.''

The amendment implements these directives by making two modifications to § 2J1.2. First, the amendment increases the base offense level in § 2J1.2 from level 12 to level 14. Second, the amendment adds a new two level enhancement to § 2J1.2. This enhancement applies if the offense (i) involved the destruction, alteration, or fabrication of a substantial number of records, documents or tangible objects; (ii) involved the selection of any essential or especially probative record, document, or tangible object to destroy or alter; or (iii) was otherwise extensive in scope, planning, or preparation. The Commission determined that existing adjustments in chapter three for aggravating role, § 3B1.1, and abuse of position of trust or use of special skill, § 3B1.3, adequately account for those particular factors described in section 805(a) of the Act.

Sixth, the amendment addresses new offenses created by the Act. Section 1520 of title 18, United States Code, relating to destruction of corporate audit records, is referenced to § 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act; Destruction and Failure to Maintain Corporate Audit Records). Section 1520 provides a statutory maximum penalty of ten years' imprisonment for knowing and willful violations of document maintenance requirements as set forth in that section or in rules or regulations to be promulgated by the Securities and Exchange Commission pursuant to that section. The amendment also expands the existing cross reference in § 2E5.3(a)(2) specifically to cover fraud and obstruction of justice offenses. Accordingly, if a defendant who is convicted under 18 U.S.C. 1520 committed the offense in order to obstruct justice, the amendment to the cross reference provision requires the court to apply § 2J1.2 instead of § 2E5.3. Other new offenses are listed in Appendix A (Statutory Index), as well as in the statutory provisions of the relevant guidelines.

648. Amendment: Chapter two, part C is amended in the heading by adding at the end ''and violations of Federal election campaign laws''.

Chapter two, part C is amended by striking the introductory commentary as follows:

Introductory Commentary

The Commission believes that pre-guidelines sentencing practice did not adequately reflect the seriousness of public corruption offenses. Therefore, these guidelines provide for sentences that are considerably higher than average pre-guidelines practice.''.

Chapter two, part C is amended by adding at the end the following new guideline and accompanying commentary:

§ 2C1.8. Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property

(a) Base Offense Level: 8

(b) Specific Offense Characteristics

(1) If the value of the illegal transactions exceeded $5,000, increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

(2) (Apply the greater) If the offense involved, directly or indirectly, an illegal transaction made by or received from—

(A) A foreign national, increase by two levels; or

(B) A government of a foreign country, increase by four levels.

(3) If (A) the offense involved the contribution, donation, solicitation, expenditure, disbursement, or receipt of governmental funds; or (B) the defendant committed the offense for the purpose of obtaining a specific, identifiable non-monetary Federal benefit, increase by two levels.

(4) If the defendant engaged in 30 or more illegal transactions, increase by two levels.

(5) If the offense involved a contribution, donation, solicitation, or expenditure made or obtained through intimidation, threat of pecuniary or other harm, or coercion, increase by four levels.

(c) Cross Reference

(1) If the offense involved a bribe or gratuity, apply § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) or § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), as appropriate, if the resulting offense level is greater than the offense level determined above.

Commentary

Statutory Provisions: 2 U.S.C. 437g(d)(1), 439a, 441a, 441a–1, 441b, 441c, 441d, 441e, 441f, 441g, 441h(a), 441i, 441k; 18 U.S.C. 607. For additional provision(s), *see* Statutory Index (Appendix A).

Application Notes:

1. Definitions.—For purposes of this guideline:

'Foreign national' has the meaning given that term in section 319(b) of the Federal Election Campaign Act of 1971, 2 U.S.C. 441e(b).

'Government of a foreign country' has the meaning given that term in section 1(e) of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611(e)).

'Governmental funds' means money, assets, or property, of the United States government, of a State government, or of a local government, including any branch, subdivision, department, agency, or other component of any such government. 'State' means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa. 'Local government' means the government of a political subdivision of a State.

'Illegal transaction' means (A) any contribution, donation, solicitation, or expenditure of money or anything of value, or any other conduct, prohibited by the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.;* (B) any contribution, donation, solicitation, or expenditure of money or anything of value made in excess of the amount of such contribution, donation,

solicitation, or expenditure that may be made under such Act; and (C) in the case of a violation of 18 U.S.C. 607, any solicitation or receipt of money or anything of value under that section. The terms 'contribution' and 'expenditure' have the meaning given those terms in section 301(8) and (9) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(8) and (9)), respectively.

2. Application of Subsection (b)(3)(B).—Subsection (b)(3)(B) provides an enhancement for a defendant who commits the offense for the purpose of achieving a specific, identifiable non-monetary Federal benefit that does not rise to the level of a bribe or a gratuity. Subsection (b)(3)(B) is not intended to apply to offenses under this guideline in which the defendant's only motivation for commission of the offense is generally to achieve increased visibility with, or heightened access to, public officials. Rather, subsection (b)(3)(B) is intended to apply to defendants who commit the offense to obtain a specific, identifiable non-monetary Federal benefit, such as a Presidential pardon or information proprietary to the government.

3. Application of Subsection (b)(4).—Subsection (b)(4) shall apply if the defendant engaged in any combination of 30 or more illegal transactions during the course of the offense, whether or not the illegal transactions resulted in a conviction for such conduct.

4. Departure Provision.—In a case in which the defendant's conduct was part of a systematic or pervasive corruption of a governmental function, process, or office that may cause loss of public confidence in government, an upward departure may be warranted.''.

Section 3D1.2(d) is amended by inserting '', 2C1.8'' after ''2C1.7''.

The Commentary to § 5E1.2 captioned ''Application Notes'' is amended in the second sentence of Note 5 by striking ''and'' after ''Control Act;'' and by inserting before the period at the end the following:

''; and 2 U.S.C. 437g(d)(1)(D), which authorizes, for violations of the Federal Election Campaign Act under 2 U.S.C. 441f, a fine up to the greater of $50,000 or 1,000 percent of the amount of the violation, and which requires, in the case of such a violation, a minimum fine of not less than 300 percent of the amount of the violation.

There may be cases in which the defendant has entered into a conciliation agreement with the Federal Election Commission under section 309 of the Federal Election Campaign Act of 1971 in order to correct or prevent a violation of such Act by the defendant. The existence of a conciliation agreement between the defendant and Federal Election Commission, and the extent of compliance with that conciliation agreement, may be appropriate factors in determining at what point within the applicable fine guideline range to sentence the defendant, unless the defendant began negotiations toward a conciliation agreement after becoming aware of a criminal investigation''.

Appendix A (Statutory Index) is amended by inserting before the line referenced to 7 U.S.C. 6 the following new lines:

''2 U.S.C. 437g(d) 2C1.8
2 U.S.C. 439a 2C1.8
2 U.S.C. 441a 2C1.8
2 U.S.C. 441a–1 2C1.8
2 U.S.C. 441b 2C1.8
2 U.S.C. 441c 2C1.8
2 U.S.C. 441d 2C1.8
2 U.S.C. 441e 2C1.8
2 U.S.C. 441f 2C1.8
2 U.S.C. 441g 2C1.8
2 U.S.C. 441h(a) 2C1.8
2 U.S.C. 441i 2C1.8
2 U.S.C. 441k 2C1.8''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 597 the following new line:

''18 U.S.C. 607 2C1.8''.

Reason for Amendment: This amendment implements the directive from Congress contained in the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, (the ''BCRA'') to the effect that the Commission ''promulgate a guideline, or amend an existing guideline * * *, for penalties for violations of the Federal Election Campaign Act of 1971 (the ''FECA'') and related election laws * * *''. The BCRA significantly increased statutory penalties for campaign finance crimes, formerly misdemeanors under the FECA. The new statutory maximum term of imprisonment for even the least serious of these offenses is now two years and for more serious offenses, the maximum term of imprisonment is five years.

To effectively punish these offenses, the Commission chose to create a new guideline at § 2C1.8 (Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property). The Commission opted against simply amending an existing guideline because it determined after review that the characteristics of election-violation cases did not bear sufficient similarity to cases sentenced under any existing guideline. The offenses which will be sentenced under § 2C1.8 include: violations of the statutory prohibitions against ''soft money'' (2 U.S.C. 441i); restrictions on ''hard money'' contributions (2 U.S.C. 441a); contributions by foreign nationals (2 U.S.C. 441e); restrictions on ''electioneering communications'' as defined at 2 U.S.C. 434(f)(3)(C); certain fraudulent misrepresentations (2 U.S.C. 441h); and ''conduit contributions'' (2 U.S.C. 441f).

The new guideline has a base offense level of level 8, which reflects the fact that these offenses, while they are somewhat similar to fraud offenses (sentenced under § 2B1.1 (Theft, Property Destruction, and Fraud) at a base offense level of level 6), generally are more serious due to the additional harm, or the potential harm, of corrupting the elective process.

The new guideline provides five specific offense characteristics to ensure appropriate penalty enhancements for aggravating conduct which may occur during the commission of certain campaign finance offenses. First, the new guideline provides a specific offense characteristic, at § 2C1.8(b)(1), that uses the fraud loss table in § 2B1.1 to incrementally increase the offense level in proportion to the monetary amounts involved in the illegal transactions. This both assures proportionality with penalties for fraud offenses and responds to Congress' directive to provide an enhancement for ''a large aggregate amount of illegal contributions.''

Second, the new guideline provides alternative enhancements, at § 2C1.8(b)(2), if the offense involved a foreign national (two levels) or a foreign government (four levels). These enhancements respond to another specific directive in the BCRA and reflect the seriousness of foreign entities attempting to tamper with the United States' election processes.

Third, the new guideline provides alternative two level enhancements, at § 2C1.8(b)(3), when the offense involves either ''governmental funds,'' defined broadly to include Federal, State, or local funds, or an intent to derive ''a specific, identifiable non-monetary Federal benefit'' (*e.g.*, a presidential pardon). Each of these enhancements responds to specific directives of the BCRA.

Fourth, the new guideline provides a two level enhancement, at subsection (b)(4), when the offender engages in ''30 or more illegal transactions.'' After a

review of all campaign finance cases in the Commission's datafile, the Commission chose 30 transactions as the number best illustrative of a ''large number'' in that context. This enhancement also responds to a specific directive in the BCRA to the effect that the Commission provide enhanced sentencing for cases involving ''a large number of illegal transactions.''

Fifth, the new guideline provides a four level enhancement, at § 2C1.8(b)(5), if the offense involves the use of ''intimidation, threat of pecuniary or other harm, or coercion.'' This enhancement responds to information received from the Federal Election Commission and the Public Integrity Section of the Department of Justice which characterizes offenses of this type as some of the most aggravated offenses committed under the FECA.

The new guideline also provides a cross reference, at subsection (c), which directs the sentencing court to apply either § 2C1.1 or § 2C1.2, as appropriate, if the offense involved a bribe or a gratuity and the resulting offense level would be greater than that determined under § 2C1.8.

Section 3D1.2 (Groups of Closely Related Counts) has been amended, consistent with the principles underlying the rules for grouping multiple counts of conviction, to include § 2C1.8 offenses among those in which the offense level is determined largely on the basis of the total amount of harm or loss or some other measure of aggregate harm. (*See* § 3D1.2(d)).

Finally, § 5E1.2 (Fines for Individual Defendants) has been amended to specifically reflect fine provisions unique to the FECA. This part of the amendment also provides that the defendant's participation in a conciliation agreement with the Federal Election Commission may be an appropriate factor for use in determining the specific fine within the applicable fine guideline range unless the defendant began negotiations with the Federal Election Commission after the defendant became aware that he or it was the subject of a criminal investigation.

[FR Doc. 03–1297 Filed 1–21–03; 8:45 am]

BILLING CODE 2211–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before March 24, 2003.

ADDRESSES: Send all comments regarding whether this information collections is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Radwan Saade, Economist, Office of Advocacy, Small Business Administration, 409 3rd Street, SW., Suite 7800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Radwan Saade, Economist, (202) 205–6878 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Small Business Use of Telecommunication Services.

Form No: N/A.

Description of Respondents: Small Businesses.

Annual Responses: 5,000.

Annual Burden: 416.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–1299 Filed 1–21–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–264]

WTO Dispute Settlement Proceeding Regarding the U.S. Department of Commerce Final Antidumping Determination Concerning Certain Softwood Lumber From Canada

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice of the request by the Government of Canada for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') to examine the U.S. Department of Commerce (''DOC'') final determination of sales at less than fair value with respect to certain softwood lumber from Canada. The panel request alleges that the initiation of the investigation, the conduct of the investigation, and the final determination are inconsistent with various provisions of the General Agreement on Tariffs and Trade 1994 (''GATT 1994'') and the Agreement on Implementation of Article VI of GATT 1994. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before February 21, 2003 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0064@ustr.gov,* Attn: ''DS264 Dispute'' in the subject line, or (ii) by fax, to Sandy McKinzy at 202–395–3640, with a confirmation copy sent electronically to the email address above.

FOR FURTHER INFORMATION CONTACT: Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508 (202) 395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)), the USTR is providing notice that on December 6, 2002, the Government of Canada submitted a request for establishment of a dispute settlement panel to examine the U.S. Department of Commerce (''DOC'') final determination of sales at less than fair value with respect to certain softwood lumber from Canada.

Major Issues Raised and Legal Basis of the Complaint

The notice of the DOC final determination of sales at less than fair value with respect to certain softwood lumber from Canada was published in the **Federal Register** on April 2, 2002, and the notice of the DOC amended final determination was published on May 22, 2002. The notices explain the basis for the DOC's final determination that certain softwood lumber from Canada is being sold, or is likely to be sold, in the United States at less than fair value.

In its request for establishment of a dispute settlement panel, Canada describes its claims in the following manner:

> The measures at issue include the initiation of the investigation, the conduct of the investigation, the Final Determination and the resulting Anti-dumping Order on Softwood Lumber from Canada. The Government of Canada considers these measures and, in particular, the determinations made and methodologies

adopted therein by the United States Department of Commerce under authority of the United States Tariff Act of 1930, including section 732(c)(4)(E), to violate the Anti-Dumping Agreement and the GATT 1994 for, among others, the following reasons:

1. The application filed by the U.S. domestic industry and the subsequent initiation of the investigation by Commerce did not comply with Article 5 of the Anti-Dumping Agreement, including Articles 5.1, 5.2, 5.3, 5.4 and 5.8. Specifically:

(a) The application submitted by the U.S. domestic industry did not include evidence reasonably available to it, including pricing of Canadian exports to the United States, pricing of the like products sold in Canada by Canadian producers, and Canadian cost data in respect of the production in Canada of the like products. By Commerce's failure to determine whether the application contained all information reasonably available to the applicant, and by Commerce initiating the investigation where the application failed to contain evidence reasonably available to the applicant, and by Commerce's failure to terminate the investigation when Commerce became aware that the application failed to contain evidence reasonably available to the applicant, the United States violated Articles 5.2, 5.3 and 5.8 of the Anti-Dumping Agreement.

(b) The application submitted by the U.S. domestic industry did not include sufficient evidence of dumping to justify initiation of the investigation. Commerce failed to examine the accuracy and adequacy of the evidence provided in the application and failed to reject the application in view of the lack of sufficient evidence of dumping required to justify the initiation of an investigation, and failed to terminate the investigation when it became evident that the application did not contain sufficient evidence, thereby resulting in violations by the United States of Articles 5.1, 5.2, 5.3 and 5.8.

(c) The Continued Dumping and Subsidy Offset Act of 2000 (CDSOA), by requiring that a member of the U.S. industry support the application as a condition of receiving payments under the CDSOA, made an objective and meaningful examination of industry support for the application impossible. The United States violated Articles 5.4 and 5.8 in that Commerce's initiation of the investigation was not based on an objective and meaningful examination and determination of the degree of support for the application by the domestic industry.

(d) The initiation by Commerce was made without a proper establishment of the facts, was based on an evaluation of the facts that was neither unbiased nor objective and does not rest on a permissible interpretation of the Anti-dumping Agreement. Accordingly, the initiation by Commerce cannot be upheld in light of the applicable standard of review under Article 17.6.

2. Commerce erroneously determined there to be a single like product (under U.S. law, termed ''class or kind'' of merchandise) rather than several distinct like products, thereby failing to assess domestic industry support in respect of each distinct like product and failing to assess the sufficiency of evidence of dumping in respect of each distinct like product, thereby resulting in violations by the United States of Articles 2.6, 4.1, 5.1, 5.2, 5.3, 5.4 and 5.8 of the Anti-Dumping Agreement and Article VI:1 of the GATT 1994. The like product and industry support determinations by Commerce were made without a proper establishment of the facts, were based on an evaluation of the facts that was neither unbiased nor objective and do not rest on a permissible interpretation of the Anti-dumping Agreement. Accordingly, the like product and industry support determinations by Commerce cannot be upheld in light of the applicable standard of review under Article 17.6.

3. In making the final determination, the United States acted inconsistently with Article VI of the GATT 1994 and Articles 1, 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2, 2.3, 2.4, 2.4.1, 2.4.2, 2.6, and 9.3 of the Anti-Dumping Agreement. Specifically, Commerce improperly applied a number of methodologies based on improper and unfair comparisons between the export price and the normal value, resulting in artificial and/or inflated margins of dumping: (a) The United States violated Article 2 of the Anti-Dumping Agreement, including Articles 2.4 and 2.4.2, and Article VI:1 of the GATT 1994 by Commerce's application of the practice of ''zeroing'' negative dumping margins, the effect of which was to inflate margins of dumping and which, in the recommendations and rulings of the Dispute Settlement Body in an earlier dispute, was found to be inconsistent with the Anti-Dumping Agreement. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(b) The United States violated Article 2 of the Anti-dumping Agreement, including Article 2.4, and Article VI:1 of the GATT 1994 by Commerce's failure, when conducting comparisons between prices of products sold in the United States and prices of products with different physical characteristics sold in the Canadian market, to make due allowance for differences that affect price comparability, including differences in physical characteristics. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(c) The United States violated Article 2 of the Anti-Dumping Agreement including Articles 2.2, 2.2.1, 2.2.1.1 and 2.2.2, and Article VI:1 of the GATT 1994 by Commerce's failure to apply a reasonable method in calculating amounts for administrative, selling and general expenses for specific exporters, including an improper allocation of general and administrative expenses including financial expenses. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(d) The United States violated Article 2 of the Anti-Dumping Agreement, including Articles 2.2, 2.2.1, 2.2.1.1, 2.2.2 and paragraph 7 of Annex I, and Article VI:1 of the GATT 1994 by Commerce's failure to apply a reasonable method to account for revenues, including by-product and futures contract revenues, as offsets in calculating costs and export price for specific exporters. A fair comparison was therefore not made by Commerce between the export price and the normal value and a distorted margin of dumping was calculated, thereby resulting in violations by the United States of Articles 2.4 and 2.4.2 of the Anti-Dumping Agreement.

(e) The methodologies, calculations, comparisons and determinations by Commerce were made without a proper establishment of the facts, was based on an evaluation of the facts that was neither unbiased nor objective and does not rest on a permissible interpretation of the Anti-dumping Agreement. Accordingly, the methodologies, calculations, comparisons and determinations by Commerce cannot be upheld in light of the applicable standard of review under Article 17.6.

(f) The methodologies, calculations, comparisons and determinations by Commerce violated Articles VI:1 and VI:2 of the GATT 1994 and Article 9.3 of the Anti-Dumping Agreement by levying an anti-dumping duty on softwood lumber from Canada in an amount greater than the margin of any dumping.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at 202–395–3640, or transmit a copy electronically to *FR0064@ustr.gov,* with ''DS264'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business

information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–1308 Filed 1–21–03; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

WTO Dispute Settlement Proceeding Regarding the United States International Trade Commission Final Determination of Threat of Material Injury in the Investigation Concerning Certain Softwood Lumber From Canada

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice of the request by the Government of Canada for consultations under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') to examine the United States International Trade Commission (''ITC'') final determination of threat of material injury with respect to certain softwood lumber from Canada. The request for consultations alleges that the ITC's determination is inconsistent with various provisions of the General Agreement on Tariffs and Trade 1994 (''GATT 1994''), the Agreement on Implementation of Article VI of GATT 1994 (''Anti-dumping Agreement''), and the Agreement on Subsidies and Countervailing Measures (''SCM Agreement''). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 15, 2003 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *fr0062@ustr.gov,* Attn: ''Lumber Injury Dispute'' in the subject line, or (ii) by fax, to Sandy McKinzy at 202–395–3640, with a confirmation copy sent electronically to the email address above.

FOR FURTHER INFORMATION CONTACT: Theodore R. Posner, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington DC, 20508 (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that on December 20, 2002, the Government of Canada requested consultations pursuant to the WTO Dispute Settlement Understanding. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised and Legal Basis of the Complaint

In its determination of May 16, 2002, published in the **Federal Register** on May 22, 2002, the ITC found that imports of softwood lumber from Canada, which the U.S. Department of Commerce found to be subsidized and sold at less than fair value, threatened an industry in the United States with material injury. The reasons for the ITC's determination are set forth in USITC Publication No. 3509 (May 2002).

By letter dated December 20, 2002, Canada requested consultations with the United States under the WTO Dispute Settlement Understanding regarding the ITC's determination.

In its request for consultations, Canada alleges that the United States has violated Article VI:6(a) of the GATT 1994; Articles 1, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 3.8, 12 and 18.1 of the Anti-dumping Agreement; and Articles 10, 15.1, 15.2, 15.3, 15.4, 15.5, 15.7, 15.8, 22 and 32.1 of the SCM Agreement. Canada alleges that these violations stem from certain errors in the ITC's determination. In particular, Canada claims that the ITC:

(i) Based its determination on ''allegation, conjecture and remote possibility'';

(ii) Failed to establish that ''a change in circumstances which would create a situation in which the subsidy and dumping would cause injury is clearly foreseen and imminent'';

(iii) Failed ''to properly consider all factors relevant to determining the existence of a threat of material injury''; and

(iv) Failed ''to properly consider the effects of the dumped and subsidized imports, their impacts on the domestic industry, and whether the dumped and subsidized imports would cause injury or threat of injury.''

Canada further alleges that the ITC failed to include in its report ''sufficient detail, relevant information and considerations, and proper reasons'' for its determination.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in Canada's request for consultations. Persons submitting comments may either send one copy by fax to Sandy McKinzy at 202–395–3640, or transmit a copy electronically to *fr0062@ustr.gov,* with ''Lumber Injury Dispute'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a

confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–1309 Filed 1–21–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2003–14214]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on Hazardous Cargo Security will meet to discuss security issues as they relate to the marine transportation of chemicals. This meeting will be open to the public.

DATES: The Subcommittee will meet on Tuesday, February 11, 2003, from 1 p.m. to 4 p.m., Wednesday, February 12, 2003, from 8 a.m. to 4 p.m., and Thursday, February 13, 2003, from 8 a.m. to 4 p.m. This 3-day meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 3, 2003. Requests to have a copy of your material distributed to each member of the Subcommittee should reach the Coast Guard on or before February 3, 2003.

ADDRESSES: The Subcommittee will meet at American Commercial Barge Line (ACBL) Company, 1701 E. Market St., Jeffersonville, Indiana. Send written material and requests to make oral presentations to Lieutenant Richard Teubner, Coast Guard Technical Representative for the Subcommittee, Commandant (G-MPS–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Lieutenant Richard Teubner, the Coast Guard Technical Representative for the Subcommittee, telephone 202–267–4129, fax 202–267–4130.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda of the 3-day meeting of the CTAC Subcommittee on Hazardous Cargo Security includes the following:

(1) Introduce subcommittee members and attendees.

(2) Review subcommittee tasking and desired outcome.

(3) Discuss hazardous cargo list created for security regulations.

(4) Discuss security regulatory developments including time frames, content, and application.

(5) Discuss notification guidelines.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the discretion of the Subcommittee Chair, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Coast Guard Technical Representative for the Subcommittee and submit written material on or before February 3, 2003. If you would like a copy of your material distributed to each member of the Subcommittee in advance of the meeting, please submit 25 copies to the Coast Guard Technical Representative for the Subcommittee no later than February 3, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Coast Guard Technical Representative for the Subcommittee as soon as possible.

Dated: January 8, 2003.

J.G. Lantz,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–1284 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Impact Statement on the Potomac Consolidated Terminal Radar Approach Control (TRACON) Airspace Redesign

AGENCY: Federal Aviation, Administration, DOT.

ACTION: Notice of Availability of a Final Environmental Impact Statement.

SUMMARY: The Federal Aviation Administration (FAA) has released a

Final Environmental Impact Statement (FEIS) for redesign of the airspace in the Baltimore-Washington area. The proposed action is to redesign the airspace in the Baltimore-Washington metropolitan area excluding noise abatement procedures. This involves developing new routes, altitudes and procedures to take advantage of the new Potomac Consolidated TRACON, improved aircraft performance, and emerging air traffic control technologies. The proposed action is not dependent on development at any of the airports in the study area.

The airspace redesign study encompasses the area within a 75-nautical mile radius centered on a radio navigational aid in Georgetown, within the District of Columbia. The study area comprises portions of five states—Delaware, Maryland, Pennsylvania, Virginia and West Virginia—and the entire District.

This EIS is tiered from an earlier EIS that evaluated environmental impacts that could result from a decision to physically consolidate the four Baltimore-Washington metropolitan areas TRACONs into a new building somewhere in the area. The first tier or ''building EIS'' resulted in FAA issuing a Record of Decision (ROD) on June 3, 1999. The ROD documented the decision to consolidate four existing TRACONs into a new facility at Vint Hill in Fauquier County, Virginia. Subsequent to the ROD, the decision was made to consolidate the Richmond TRACON into the PCT. However, the incorporation of the Richmond TRACON has no effect on the scope of the airspace redesign.

The purpose of this airspace redesign is to take full advantage of the benefits afforded by the newly consolidated TRACON facility by increasing air traffic efficiency and enhancing safety in the Baltimore-Washington metropolitan area.

Copies of the FEIS are available for review at major libraries in the study area. A summary of the FEIS can be viewed on the Internet at *http://www.faa.gov/ats/potomac.*

DATES: Written comments on the FEIS will be accepted until February 18, 2003. Written comments may be sent to: FAA Potomac TRACON, Air Traffic 2400, Attention: Fred Bankert, 3699 Macintosh Drive, Warrenton, VA 20187.

FOR FURTHER INFORMATION CONTACT: Potomac Consolidated TRACON (800) 762–9531, E-mail: *9–AEA–PTC-Comments@faa.gov.*

SUPPLEMENTARY INFORMATION: A TRACON facility provides radar air traffic control services to aircraft operating on Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) procedures generally beyond 5 miles and within 50 miles of the host airport at altitudes from the surface to approximately 17,000 feet. These distances and altitudes may vary depending on local conditions and infrastructural constraints such as adequate radar and radio frequency coverage. The primary functions of the TRACON is to provide a variety of air traffic control services to arrival, departure, and transient aircraft within its assigned airspace. These services include aircraft separation, in flight traffic advisories and navigational assistance. When fully operational, the Potomac Consolidated TRACON will provide terminal radar air traffic control services to the four major airports and a number of small reliever airports located within the Baltimore-Washington area. It will also provide service to the Richmond, VA airport.

This EIS considers four airspace redesign alternatives consisting of a No Action Alternative and three other alternatives that address changes in routes and altitudes for aircraft away from the close-in airport environment. Changes to initial departure of final arrival procedures are not proposed. Generally, aircraft would be three to five miles from the departure/arrival airport before the changes that are proposed for each alternative would take effect, with the exception of the No Action Alternative, which considers no changes to the existing airspace. None of the alternatives would produce significant environmental impact. Additionally, current noise abatement procedures at the airports would not be changed under any of the alternatives. The FEIS identifies Alternative 2 at the Preferred Alternative.

Dated: January 14, 2003 in Washington, DC.

Alan Hendry,

Program Director, Potomac Consolidated TRACON.

[FR Doc. 03–1352 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–02]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 11, 2003.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify docket number FAA–2002–13885–1 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Carol Greb (816–329–4136), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on January 15, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13885–1.

Petitioner: Raytheon Aircraft Services.

Section of 14 CFR Affected: 14 CFR part 23, 23.807(d)(1)(ii).

Description of Relief Sought: Raytheon Aircraft Services (RAS) seeks exemption from 14 CFR 23.807(d)(1)(ii) for the Model 1900D. This rule requires commuter category aircraft, with a passenger seating capacity of 16 or greater, to be equipped with an accessible emergency exit on the same side of the aircraft as the entry door and two exits on the opposite side of the aircraft. RAS seeks a Supplemental Type Certificate for the 1900D to install a cargo configuration floor plan. The floor plan design would allow access to the forward entry door, but block access to the emergency exit on that side of the airplane. An emergency exit on the opposite side of the airplane would remain accessible.

The cargo configuration floor plan allows seating for three occupants: the pilot, co-pilot, and an observer. The baseline Model 1900D is certificated to a total passenger seating capacity of 19, and is equipped with a main cabin door and three emergency exits, per 14 CFR 23.807(d)(1)(ii). A simple comparison shows that egress for three persons through two exits, one on each side of the cabin, gives a level of safety equal to the original certification basis.

[FR Doc. 03–1318 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jackson International Airport, Jackson, MS

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 Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dirk Vanderleest, Executive Director of the Jackson Municipal Airport Authority at the following address: Post Office Box 98109, Jackson, MS 39298–8109.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jackson Municipal Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Jackson, Mississippi (601) 664–9882. 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 Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 7, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson Municipal Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than Date 120 days after receipt of application supplement.

The following is a brief overview of the application.

PFC Application No.: 03–04–C–00–JAN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2007.

Proposed charge expiration date: June 1, 2010.

Total estimated net PFC revenue: $6,211,722.

Brief description of proposed project(s): Runway Sweeper; Tricherator; Local Share & Engineering West Parallel Lights; Local Share & Engineering West Taxiway Overlay; Local Share Air Cargo Road; Local Share Air Cargo Apron/Taxiway; H. F. Environmental Assessment; Metes & Bounds Survey; Surface Transportation System; Rehab International Drive.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air taxi/commercial operators (ATCO) are requested to be excluded from the collection of a PFC.

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 Jackson Municipal Airport Authority.

Issued in Jackson, Mississippi on January 10, 2003.

Wayne Atkinson,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 03–1316 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (#03–03–C–00–SGU) To Impose and To Use a Passenger Facility Charge (PFC) at the St. George Municipal Airport, Submitted by the City of St. George, UT

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 use a PFC at the St. George Municipal Airport under the provisions of 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 February 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David R. Ulane, Airport Manager, at the following address: St. George Municipal Airport, 620 S. Airport Road, St. George, Utah 84770.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the St. George Municipal Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. 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 (#03–03–C–00–SGU) to use a PFC at the St. George Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 10, 2003, the FAA determined that the application to impose a PFC submitted by the City of St. George, Utah, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 10, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: July 1, 2003.

Proposed charge expiration date: June 30, 2008.

Total requested for use approval: $538,575.

Brief description of proposed projects: Acquire aircraft rescue and fire fighting vehicle, acquire self-contained regenerative air sweeper, aircraft rescue and fire fighting building improvements, replacement airport planning, replacement airport environmental impact statement, replacement airport phase II environmental impact statement, construct replacement airport.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: Non-scheduled, on demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the St. George Municipal Airport.

Issued in Renton, Washington, on January 10, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–1317 Filed 1–21–03; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Updates of Digital Mapping Data for Hazardous Liquid Pipeline High Consequence Areas (HCA)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: The Office of Pipeline Safety (OPS) is issuing this advisory bulletin to owners and operators of hazardous liquid pipeline systems. OPS has updated and revised the High Consequence Area (HCA) digital mapping datasets based on revised U.S. Government data. The datasets are now available for download for ''High Population Areas,'' ''Other Populated Areas,'' and ''Commercially Navigable Waterways.'' Operators have one year from the date of this bulletin to incorporate these new high consequence areas into their baseline integrity management assessment plans. The digital mapping datasets for Ecological and Drinking Water Unusually Sensitive Areas (USA) are not being updated at this time.

FOR FURTHER INFORMATION CONTACT: Sam Hall, (202) 493–0591; or by e-mail, *samuel.hall@rspa.dot.gov.* Steve Fischer, (202) 366–6267; or by e-mail, *steven.fischer@rspa.dot.gov.* This document can be viewed at the OPS home page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal hazardous liquid pipeline safety regulations at 49 CFR 195.452 require hazardous liquid pipeline operators to assess, evaluate, remediate and validate, through comprehensive analysis, the integrity of hazardous liquid pipeline segments that, in the event of a leak or failure, could affect populated areas, areas unusually sensitive to environmental damage and commercially navigable waterways. OPS has identified these High Consequence Areas in its National Pipeline Mapping System (NPMS).

Updated digital mapping data to delineate high consequence areas for use in geographic information systems is now available for high population areas, other populated areas, and commercially navigable waterways. Population information updates are based on data from the U.S. Census Bureau's TIGER 2000 datasets. Updates for commercially navigable waterways are based on the 2002 version of the National Waterways Network as provided by the Bureau of Transportation Statistics. All updated data is available for download from the NPMS Web site at *http://www.npms.rspa.dot.gov.*

Operators have one year from the date of this bulletin to incorporate these new High Consequence Areas into their baseline integrity management assessment plans as required by 49 CFR 195.412. The digital mapping datasets for Ecological and Drinking Water Unusually Sensitive Areas (USA) are not being updated at this time.

II. Advisory Bulletin (ADB–03–01)

To: Owners and Operators of Hazardous Liquid Pipeline Systems.

Subject: Updates of Digital Mapping Data for Hazardous Liquid Pipeline High Consequence Areas (HCA).

Purpose: To advise owners and operators of hazardous liquid pipeline systems of the availability of updated and revised High Consequence Area digital mapping data for high population areas, other populated areas, and commercially navigable waterways.

Advisory: Updated digital mapping data for high population areas, other populated areas, and commercially navigable waterways are now available to owners and operators of hazardous liquid pipeline systems. The updated data is available for download from the NPMS Web site at *http://www.npms.rspa.dot.gov.* Operators have one year from the date of this bulletin to incorporate these new High Consequence Areas into their baseline integrity management assessment plans as required by 49 CFR 195.412. The digital mapping datasets for Ecological and Drinking Water Unusually Sensitive Areas (USA) are not being updated at this time.

Issued in Washington, DC, on January 13, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–1322 Filed 1–21–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34306]

K. Earl Durden, Rail Management Corporation, and Rail Partners, L.P.—Corporate Family Transaction Exemption

K. Earl Durden (Durden), Rail Management Corporation (RMC),[1] and Rail Partners, L.P. (Rail Partners)[2] (collectively, applicants), have filed a verified notice of exemption under 49 CFR 1180.2(d)(3) to undertake a corporate reorganization to simplify their corporate structure by: (1) merging Galveston Railway, Inc. (GRI), into RMC, and (2) dissolving Emerald Coast Investments, L.L.C. (Emerald Coast) and distributing its assets among its various members.

The transaction was expected to be consummated on or after December 30, 2002, the effective date of the exemption (7 days after the notice was filed).

At the time this notice was filed, applicants controlled 14 Class III rail carriers located in Alabama, Arizona, Arkansas, Florida, Georgia, Kentucky, North Carolina, Tennessee, Texas, and Wisconsin. They are: AN Railway, L.L.C.; Atlantic & Western Railway, L.P.; The Bay Line Railroad, L.L.C. (Bay Line); Copper Basin Railway (Copper Basin); East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; KWT Railway, Inc. (KWT); Little Rock & Western Railway, L.P.; M&B Railroad, L.L.C.; Tomahawk Railway, L.P.; Valdosta Railway, L.P.; Western Kentucky Railway, L.L.C. (Western Kentucky); and Wilmington Terminal Railroad, L.P. These rail carriers are referred to as the RMC Rail Group. Applicants state that, in most cases, RMC is the general or managing partner of the railroad, holding a 1% interest, while Rail Partners is a limited partner holding the remaining 99% interest.[3]

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside applicants' corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324–25 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34306, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Donald G. Avery, 1224 17th Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1336 Filed 1–21–03; 8:45 am]

BILLING CODE 4915–00–P

[1] RMC is a noncarrier holding company which is controlled by Durden. RMC's former corporate name was Rail Management and Consulting Corporation.

[2] Rail Partners is a noncarrier limited partnership. Durden, through RMC and four other entities that he controls, also controls Rail Partners. Additionally, Durden controls two trusts that, with RMC, control Emerald Coast. Durden separately controls noncarrier GRI. GRI, Emerald, and RMC in turn control Rail Partners.

[3] Four exceptions apply: KWT, in which GRI controls 100% of the voting stock; Bay Line and Western Kentucky, in which Rail Partners holds 97% of the voting stock and 3% is held by RMC, Durden, and Durden-controlled entities; and Copper Basin, in which Rail Partners holds 55% of the voting stock and Asarco, Inc., an unaffiliated entity, holds the minority 45% interest.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34307]

State of New Hampshire Department of Transportation—Acquisition and Operation Exemption—Certain Assets of Maine Central Railroad Company

The State of New Hampshire, Department of Transportation (the State), has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the Maine Central Railroad Company a 8.36-mile portion of a line of railroad extending between milepost P–103.20 in Whitefield, in Coos County, NH, and milepost 111.56 in Gilman, in Essex County, VT (the Line).

According to the State, the Lamoille Valley Railroad Company (LVRC) and the Twin State Railroad Corporation (TSR) currently lease the Line, but have not provided service over it since October 1999. The State claims that LVRC and TRS have not maintained the Line in anticipation of providing service or in compliance with applicable laws. The State will acquire the Line subject to LVRC and TSR retaining their operating rights on it, but the State will likely seek to obtain a new operator to perform common carrier service on the Line.

Consummation of this transaction was scheduled to occur on or after December 30, 2002.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34307, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Craig S. Donais, Esquire, Transportation & Construction Bureau, New Hampshire Department of Justice, Office of the Attorney General, 33 Capitol Street, Concord, NH 03301–6397.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: January 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1337 Filed 1–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34272]

North Carolina & Virginia Railroad, Inc.—Lease and Operation Exemption-Norfolk Southern Railway Company

North Carolina & Virginia Railroad, Inc., the Chesapeake & Albemarle Division (NCVA), a Class III rail carrier, has filed a verified notice of exemption under CFR 1150.41 to lease and operate a 4-mile rail line from Norfolk Southern Railway Company extending between milepost NS 4.0 at Chesapeake, VA, and milepost NS 8.0 at Butts, VA.

Because NCVA's projected annual revenues will exceed $5 million, NCVA certified to the Board on October 22, 2002, that it had, on that date, posted the required notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line and had served a copy of the notice of intent on the national offices of all labor unions with employees on the rail line. *See* 49 CFR 1150.42(e). NCVA stated in its verified notice that the transaction was scheduled to take place on January 4, 2002, or shortly thereafter.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34272, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary A. Laakso, Vice President Regulatory Counsel, North Carolina & Virginia Railroad, Inc., 5300 Broken Sound Boulevard NW., Boca Raton, FL 33487, and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on or Web site at *''http://www.stb.dot.gov.''*

Decided: January 14, 2003.

By the Board, David M Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1228 Filed 1–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34296]

Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., and Fox Valley & Western Ltd.''Intracorporate Family Transaction Exemption

Wisconsin Central Transportation Corporation (WCTC),Wisconsin Central Ltd. (WCL), and Fox Valley & Western Ltd. (FVW)[1] have jointly filed a verified notice of exemption under the Board's intracorporate family class exemption at 49 CFR 1180.2(d)(3) to merge FVW into WCL, with WCL as the surviving entity. With the consent of the Board of Directors of FVW, and pursuant to an exchange agreement between WCL and FVW, WCTC was to convey ownership of FVW to WCL, after which FVW would be dissolved into WCL pursuant to a liquidation agreement between WCL and FVW. All of FVW's assets, rights, obligations, and responsibilities will be in the name of WCL.

The transaction was scheduled to be consummated on December 31, 2002.

The purpose of the transaction is to simplify the corporate structure of WCTC and streamline accounting, finance and management functions. The proposed transaction will also simplify the integration of CNR's information technology systems into Wisconsin Central's system.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.-Control-Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34296, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Jr., Canadian National/Illinois Central, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: January 14, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–1335 Filed 1–21–03; 8:45 am]

BILLING CODE 4915–00–P

[1] WCTC is a noncarrier holding company that owns, besides WCL and FVW, the Sault Ste. Marie Bridge Company (located in Michigan and Wisconsin) and Wisconsin Chicago Link Ltd. (located in Illinois). WCTC's stock is wholly owned by Grand Trunk Corporation, a subsidiary of Canadian National Railway Company (CNR). *See Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc.-Control-Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd.,* STB Finance Docket No. 34000 (Decision No. 10) (STB served Sept. 7, 2001).

WCL and FVW are Class II rail carriers. WCL operates approximately 1,800 route miles in Wisconsin, Michigan, Illinois, and Minnesota. FVW operates approximately 350 route miles entirely in Wisconsin primarily in the Fox River Valley, with one line extending from eastern Wisconsin to the Mississippi River at East Winona.

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Cancellation of Customs Broker License

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice.

Name	License No.	Issuing port
Americana Brokers.	11126	Great Falls.

Dated: January 13, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–1277 Filed 1–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker licenses were erroneously included in a list of revoked Customs broker licenses.

Name	License	Port name
Jamie Davila	06093	New York.
GPS Custom House Brokerage, Inc.	07181	Washington, DC.

Customs broker license Nos. 06093 and 07181 remain valid.

Dated: January 13, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–1279 Filed 1–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license and any and all associated permits have been cancelled due to the death of the broker:

Name	License No.	Port Name
Horacio Espinoza	06699	Houston.

Dated: January 13, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–1280 Filed 1–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Revocation of Customs Broker Permit

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.45(b)), the following Customs Broker Permit is revoked by operation of law.

Name	Permit No.	Issuing Port
Port Brokers, Inc.	3974	San Francisco.

Dated: January 13, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–1278 Filed 1–21–03; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday, January 30, 2003, 9:15 a.m.–5 p.m.

LOCATION: 1200 17th Street, NW., Suite 200, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January 2003 Board Meeting; Approval of Minutes of the One Hundred Seventh Meeting (November 21, 2002) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Program Reports; Review of Individual Grant Applications; Other Issues.

CONTACT: Mr. John Brinkley, Director, Office of Public Outreach, Telephone: (202) 457–1700.

Dated: January 16, 2003.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 03–1425 Filed 1–16–03; 4:33 pm]

BILLING CODE 6820–AR–M

Corrections

Federal Register

Vol. 68, No. 14

Wednesday, January 22, 2003

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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47012; File No. SR–NASD–2002–169]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Modify Maximum Execution Fees and Credits for SuperMontage Transactions in Low-Priced Securities

December 16, 2002.

Correction

In notice document 02–32321 beginning on page 78551 in the issue of Tuesday, December 24, 2002 make the following correction:

On page 78551, in the third column, the docket number and date are corrected to read as set forth above.

[FR Doc. C2–32321 Filed 1–21–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 25, and 97

[Docket No. FAA–2002–13982; Amendment Nos. 1–49, 25–108, 97–1333]

RIN 2120–AD40

1–g Stall Speed as the Basis for Compliance With Part 25 of the Federal Aviation Regulations; Correction

Correction

In rule document 03–656 appearing on page 1955 in the issue of Wednesday, January 15, 2003, make the following correction:

On page 1955, in the first column, the docket number is corrected to read as set forth above.

[FR Doc. C3–656 Filed 1–21–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
January 22, 2003

Part II

Office of Government Ethics

Privacy Act of 1974; Systems of Records; Notice

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; Systems of Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of proposed new and revised systems of records.

SUMMARY: In this notice, OGE is proposing to revise and rename two existing Governmentwide systems of records under the Privacy Act covering Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records, and Executive Branch Confidential Financial Disclosure Reports. In addition, OGE is establishing five new internal systems of records for employees of the Office of Government Ethics only, covering Pay, Leave and Travel Records, Telephone Call Detail Records, Grievance Records, Computer Systems Activity and Access Records, and Employee Locator and Emergency Notification Records. This notice fulfills the requirement of the Privacy Act of 1974 that an agency publish a **Federal Register** notice of its systems of records.

DATES: Public comments are invited and must be received by March 24, 2003. These proposed new and revised systems of records will become effective without change May 22, 2003, unless comments are received which result in a contrary determination by OGE.

ADDRESSES: Comments on any aspect of these OGE systems of records should be sent to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Ms. Newton. Electronic comments may also be sent to OGE's Internet E-mail address at *usoge@oge.gov* (such comments should include the caption ''OGE Privacy Act New and Revised Systems of Records'').

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Attorney-Advisor, Office of Government Ethics, telephone: 202–208–8000, extension 1137; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

A. *Background.* Under the Privacy Act, 5 U.S.C. 552a(e)(4), each agency is required to publish in the **Federal Register** notice of the establishment and revision of its systems notices. The Office of Government Ethics (OGE) used to be part of the Office of Personnel Management (OPM). Not long after OGE became a separate agency on October 1, 1989, OGE published in the **Federal Register** two Governmentwide systems of records (55 FR 6327–6331 (February 22, 1990)) that were previously among OPM's systems of records (old OPM/GOVT–4 & –8). This present notice revises those two existing Governmentwide systems of records and establishes five new internal OGE systems of records.

B. *Revised Systems of Records.* OGE is proposing to revise and rename its two existing Governmentwide systems of records: OGE/GOVT–1 (Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records) and OGE/GOVT–2 (Confidential Statements of Employment and Financial Interests). The proposed revisions to both systems include a change in the name of each system to: Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (OGE/GOVT–1) and Executive Branch Confidential Financial Disclosure Reports (OGE/GOVT–2). Other proposed revisions include different systems managers, as well as additional routine uses including disclosures between agencies with respect to transferred or detailed employees, to Congress (on behalf of the subject individual), to an adjudicative body and the Department of Justice in connection with litigation, and to contractors and other non-Government employees working on ethics matters for agencies. In addition, a change in the pay threshold for the collection of the public financial disclosure reports would be reflected in OGE/GOVT–1.

C. *New Internal Systems of Records.* OGE is also proposing to establish five new internal systems of records to cover current and former OGE employees: OGE/INTERNAL–1 (Pay, Leave and Travel Records), OGE/INTERNAL–2 (Telephone Call Detail Records), OGE/INTERNAL–3 (Grievance Records), OGE/INTERNAL–4 (Computer Systems Activity and Access Records), and OGE/INTERNAL–5 (Employee Locator and Emergency Notification Records).

The records for maintenance in proposed OGE/INTERNAL–1 are those used to administer the pay, leave, and travel requirements of OGE. In this proposed system, the records could be disclosed for a number of routine uses compatible with the purposes for which the information in the records was collected, including to the Department of the Treasury, to the Internal Revenue Service, to authorized employees of another Federal agency that provides OGE with assistance in processing pay, leave and travel, to the Office of Management and Budget, to Congress, to a court or another adjudicative body, to an adjudicative body and the Department of Justice in connection with litigation, to labor organization officials for exclusive representation purposes or to the appropriate Department of Health and Human Services employees for matters related to paternity and child support. These documents are located in a secured environment and are maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedules 2 and 9.

The records for maintenance in OGE/INTERNAL–2 are those used to verify the telephone usage of current and former OGE employees, who receive telephone calls placed from or charged to telephones of the Office of Government Ethics. This proposed system is being established consistent with the Office of Management and Budget recommendation that agencies create a system of records to maintain telephone call detail records that are used to determine accountability for telephone usage. 52 FR 12990–12992 (04/20/87). In this proposed system, the records could be disclosed for a number of routine uses compatible with the purposes for which the information in the records was collected, including to telecommunications companies, to the General Services Administration, to Congress, to a court or other tribunal, to the Department of Justice in connection with litigation, to an appropriate Federal, State or local agency responsible for investigating possible violations of civil, criminal law or regulation, or to labor organization officials for exclusive representation purposes. These documents are located in a secured environment and are maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule 12.

The records for maintenance in proposed OGE/INTERNAL–3 are those that contain information relating to grievances filed by OGE employees under administrative procedures authorized by 5 CFR part 771 as well as records of negotiated grievances and arbitration systems that OGE has or may establish through negotiations with recognized labor organizations in accordance with 5 U.S.C. 7121. In this proposed system, the records could be disclosed for a number of routine uses compatible with the purposes for which the information in the records was collected, including to Congress, a court or another adjudicative body, an adjudicative body and the Department of Justice in connection with litigation, to any source from which additional information is required in the course of processing a grievance, to the extent necessary to identify the individual,

inform the source of the purpose(s) of the request, and identify the type of information required, to labor organization officials for exclusive representation purposes, or to the Department of Labor for labor-management functions. These documents are located in a secured environment and are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules or other records disposition authority.

The records for maintenance in proposed OGE/INTERNAL–4 are those that contain data used by OGE systems and security personnel, or persons authorized to assist these individuals to plan and manage system services and to perform their official duties. In this proposed system, the records could be disclosed for a number of routine uses compatible with the purposes for which the information in the records was collected, including to investigate improper access or other improper activity related to computer system access; to initiate disciplinary or other such action; and/or where the record(s) may appear to indicate a violation or potential violation of the law, to refer such record(s) to the appropriate law enforcement agency for investigation. These documents are located in a secured environment and are maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule 20.

The records for maintenance in proposed OGE/INTERNAL–5 are those used to identify an individual for OGE officials to contact should an emergency (medical or otherwise) occur while the employee is on the job. The information contained in this system as proposed could also be used by authorized OGE personnel to contact OGE employees working from home or, on infrequent occasions, to contact OGE employees absent from work about work-related issues. These documents are located in a secured environment and are maintained and disposed of in accordance with the appropriate OGE records disposition authority.

D. *Consultation with OMB and the Congress.* In accordance with 5 U.S.C. 552a(r) of the Privacy Act, the Office of Government Ethics (OGE) has provided a report on the new and proposed revised systems to the Office of Management and Budget (OMB) and the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate.

Approved: January 10, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics is publishing the following notice of proposed revised Privacy Act Governmentwide systems of records and proposed new OGE internal Privacy Act systems of records:

OGE/GOVT–1

SYSTEM NAME:

Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records.

SYSTEM LOCATION:

Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, and designated agency ethics offices.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on: The President, Vice President, and candidates for those offices; officers and employees including special Government employees, whose positions are classified above GS–15 of the General Schedule or at an equivalent rate of basic pay equal to or greater than 120% of the minimum rate of basic pay for GS–15; officers or employees in a position determined by the Director of the Office of Government Ethics to be of equal classification to GS–15 or above; Administrative Law Judges; excepted service employees in positions that are of a confidential or policymaking nature unless an employee or group of employees are exempted by the Director of the Office of Government Ethics; members of a uniformed service whose pay grade is at or in excess of O–7 under section 201 of title 37, United States Code; the Postmaster General, the Deputy Postmaster General, Governor of the Board of Governors of the U.S. Postal Service and each officer or employee of the U.S. Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than 120% of the minimum rate of basic pay for GS–15; the Director of the Office of Government Ethics and each agency's primary designated agency ethics official; any civilian employee employed in the Executive Office of the President (other than a special Government employee) who holds a commission of appointment from the President; and nominees for positions requiring Senate confirmation. This system includes both former and current employees in these categories who have filed financial disclosure statements under the requirements of the Ethics in Government Act of 1978, as amended, or who otherwise come under the requirements of the Ethics Act. This system also contains information that is necessary for administering all provisions of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989 (Pub. L. 101–194), as amended, and E.O. 12674 as modified on any current or former officer or employee of the executive branch.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains: Financial information such as salary, dividends, retirement benefits, interests in property, deposits in a bank and other financial institutions; information on gifts received; information on certain liabilities; information about positions as an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business, non-profit organization, labor organization, or educational institution; information about non-Government employment agreements, such as leaves of absence to accept Federal service, continuation of payments by a non-Federal employer; and information about assets placed in trust pending disposal. This system also includes other documents developed or information and material received by the Director of the Office of Government Ethics, or agency ethics officials in administering the Ethics of Government Act of 1978 or the Ethics Reform Act of 1989, as amended, which are retrieved by name or other personal identifier. Such other documents or information may include, but will not be limited to: ethics agreements, documentation of waivers issued to an officer or employee by an agency pursuant to section 208(b)(1) or section 208(b)(3) of title 18, U.S.C.; certificates of divestiture issued by the President or by the Director of OGE pursuant to section 502 of the Ethics Reform Act of 1989; information necessary for the rendering of ethics counseling, advice or formal advisory opinions, or the resolution of complaints; the actual opinions issued; and records of referrals and consultations regarding current and former employee's who are or have been the subject of conflicts of interest or standards of conduct inquiries or determinations, or employees who are alleged to have violated department, agency or Federal ethics statutes, rules, regulations or Executive orders. Such information may include

correspondence, documents or material concerning an individual's conduct, reports of investigations with related exhibits, statements, affidavits or other records obtained during an inquiry. These documents may include information related to personal and family financial and other business interests, positions held outside the Government and acceptance of gifts. The records may also contain reports of action taken by the agency, decisions and reports on legal or disciplinary action resulting from any referred administrative action or prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 31 U.S.C. 1353; E.O. 12674 (as modified by E.O. 12731).

PURPOSE(S):

All records are maintained in accordance with the requirements of the Ethics in Government Act of 1978 and the Ethics Reform Act of 1989, as amended, and E.O. 12674 as modified. These requirements include the filing of financial status reports, reports concerning certain agreements between the covered individual and any prior private sector employer, ethics agreements, and the preservation of waivers issued to an officer or employee pursuant to section 208 of title 18 and certificates of divestiture issued pursuant to section 502 of the Ethics Reform Act. Such statements and related records are required to assure compliance with these acts and to preserve and promote the integrity of public officials and institutions. The requirements also include the possession or maintenance of information being researched or prepared for referral by ethics officials concerning employees or former employees of the Federal Government who are the subject of complaints of misconduct or alleged violations of ethics laws. These complaints may be referred to the Office of the Inspector General of the agency where the employee is or was employed or to the Department of Justice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose the information furnished by the reporting official, in accordance with provisions of section 105 of the Ethics in Government Act of 1978, as amended, to any requesting person.

b. To disclose, in accordance with section 105 of the Ethics in Government Act, as amended, and subject to the limitations contained in section 208(d)(1) of title 18, U.S.C., any determination granting an exemption pursuant to 208(b)(1) or 208(b)(3) of title 18, U.S.C., to any requesting person.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

e. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

f. By the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

g. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

h. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

i. To disclose the public financial disclosure report and any accompanying documents to reviewing officials in a new office, department or agency when an employee transfers or is detailed from a covered position in one office, department or agency to a covered position in another office, department or agency.

j. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

k. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

Note: When an agency is requested to furnish such records to the Director or other authorized officials of the Office of Government Ethics (OGE), such a disclosure is to be considered as made to those officers and employees of the agency which co-maintains the records who have a need for the records in the performance of their official duties in accordance with the Ethics in Government Act of 1978, 5 U.S.C. app., and other ethics-related laws, Executive orders and regulations conferring pertinent authority on OGE, pursuant to the provision of the Privacy Act at 5 U.S.C. 552a(b)(1).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by the name or other programmatic identifier assigned to the individual on whom they are maintained.

SAFEGUARDS:

These records are maintained in file cabinets which may be locked or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls and other system-based protection methods.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration General Records Schedule for ethics program records, these records are generally retained for a period of six years after filing, or for such other period of time as is provided for in that schedule for certain specified types of ethics records. In cases where records are filed by, or with respect to, a nominee for an appointment requiring confirmation by the Senate when the nominee is not appointed and Presidential and Vice-Presidential

candidates who are not elected, the records are generally destroyed one year after the date the individual ceased being under Senate consideration for appointment or is no longer a candidate for office. However, if any records are needed in an ongoing investigation, they will be retained until no longer needed in the investigation. Destruction is by shredding or electronic deletion.

SYSTEM MANAGER(S) AND ADDRESS:

a. For records filed directly with the Office of Government Ethics by non-OGE employees: Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

b. For records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency: The DAEO at the department or agency concerned; and

c. For records filed with the Federal Election Commission (FEC) by candidates for President or Vice President: The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact, as appropriate:

a. For records filed directly with OGE by non-OGE employees, contact the OGE Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

b. For records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency, contact the DAEO at the department or agency concerned; and

c. For records filed with the FEC by candidates for President or Vice President, contact the FEC General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

c. Dates of employment.

Individuals seeking to determine if a system contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the appropriate office as shown in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

c. Dates of employment.

d. Reasonably specify the record content being sought.

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Since the information in these records is updated on a periodic basis, most record corrections can be handled through established administrative procedures for updating the records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the appropriate office shown in the Notification Procedure section.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person, such as a trustee, attorney, accountant, banker, or relative.

b. Federal officials who review the statements to make conflict of interest determinations.

c. Persons alleging conflict of interests or violations of other ethics laws and persons contacted during any investigation of the allegations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/GOVT–2

SYSTEM NAME:

Executive Branch Confidential Financial Disclosure Reports.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Individual agency ethics offices or other designated agency offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and employees in the executive branch whose position is classified at GS–15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; officers or employees of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; members of a uniformed service whose pay grade is less than O–7 under 37 U.S.C. 201; and officers or employees in any other position determined by the Designated Agency Ethics Official to be of equal classification. In addition, all executive branch special Government employees as defined in 18 U.S.C. 202(a) and 5 CFR 2634.105(s) are required to file unless they are required to file public financial disclosure reports or their position has been excluded from filing. The system includes both current and former Federal employees in these categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain statements and amended statements of personal and family holdings and other interests in property; income; gifts and reimbursements; liabilities; agreements and arrangements; outside positions; and other information related to conflict of interest determinations. These statements may be certifications of no new interests for the reporting period, and may be agency supplemental or alternative confidential report forms.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674 (as modified by E.O. 12731).

PURPOSE(S):

These records are maintained to meet the requirements of or under Executive Orders 12674 as modified, 5 CFR part 2634, agency regulations thereunder, as well as section 107 of the Ethics in Government Act of 1978, as amended, concerning the filing of confidential financial disclosure reports. Such reports are required to assure compliance with ethics laws and regulations, and to determine if an actual or apparent conflict of interest exists between the employment of individuals by the Federal Government and their outside employment and financial interests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These confidential records and the information contained therein may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

c. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

d. To the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

e. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

f. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

g. To disclose the confidential financial disclosure report or certificate of no new interests and any accompanying documents to reviewing officials in a new office, department or agency when an employee transfers or is detailed from a covered position in one office, department or agency to a covered position in another office, department or agency.

h. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

i. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

Note: When an agency is requested to furnish such records to the Director or other authorized officials of the Office of Government Ethics (OGE), such a disclosure is to be considered as made to those officers and employees of the agency which co-maintains the records who have a need for the records in the performance of their official duties in accordance with the Ethics in Government Act of 1978, 5 U.S.C. app., and other ethics-related laws Executive orders and regulations conferring pertinent authority on OGE, pursuant to the provision of the Privacy Act at 5 U.S.C. 552a(b)(1).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by the name or other programmatic identifier assigned to the individual on whom they are maintained.

SAFEGUARDS:

These records are located in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RETENTION AND DISPOSAL:

In accordance with the National Archives and Records Administration General Records Schedule for such ethics program records, these records generally are retained for six years after filing, except when filed by or with respect to a nominee for an appointment requiring confirmation by the Senate when the nominee is not appointed. In such cases, the records are generally destroyed one year after the date the individual ceased being under Senate consideration for appointment. However, if any records are needed in an ongoing investigation, they will be retained until no longer needed in the investigation. Destruction is by shredding or electronic deletion.

SYSTEM MANAGER(S) AND ADDRESS:

a. For records filed directly with the Office of Government Ethics by non-OGE employees: Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; and

b. For records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency: The DAEO at the department or agency concerned.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact, as appropriate:

a. For records filed directly with OGE by non-OGE employees, contact the OGE Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; or

b. For records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency, contact the DAEO at the department or agency concerned.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

c. Dates of employment.

Individuals seeking to determine if a system contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Designated Agency Ethics Official or designee at the agency where the reports were filed. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Department or agency and component with which employed or proposed to be employed.

c. Dates of employment.

d. Reasonably specify the record content being sought.

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Since the information in these records is updated on a periodic basis, most

record corrections can be handled through established administrative procedures for updating records. However, individuals can obtain information on the procedures for contesting the records under the provisions of the Privacy Act by contacting the Designated Agency Ethics Official or designee at the agency where the reports were filed.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The subject individual or by a designated person such as a trustee, attorney, accountant, banker, or relative.

b. Federal officials who review the statements to make conflict of interest determinations.

c. Persons alleging conflicts of interests or other violations of ethics laws and persons contacted during any investigation of the allegations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/INTERNAL–1

SYSTEM NAME:

Pay, Leave and Travel Records.

SYSTEM LOCATION:

Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office of Government Ethics.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains various records relating to pay, leave, and travel. This includes information such as: Name; date of birth; social security number; home address; grade; employing organization; timekeeper number; salary; pay plan; number of hours worked; leave accrual rate, usage, and balances; Civil Service Retirement and Federal Retirement System contributions; FICA withholdings; Federal, state, and local tax withholdings; Federal Employee's Group Life Insurance withholdings; Federal Employee's Health Benefits withholdings; charitable deductions; allotments; garnishment documents; travel expenses; and information on the leave transfer program and fare subsidy program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5501, 5525; 5 U.S.C. App. (Ethics in Government Act of 1978); 44 U.S.C. 3101, 3102.

PURPOSE(S):

These records are used to administer the pay, leave, and travel requirements of the Office of Government Ethics and in the administration of the transit fare subsidy program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information contained therein may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

c. To disclose information to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

f. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

g. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

h. To disclose information to the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.

i. To disclose information to the Social Security Administration (SSA) and the Department of the Treasury as required in accordance with their authorized functions, including Federal Insurance Collections Act withholding and benefits for the SSA and the issuance of paychecks and savings bonds for the Treasury.

j. To disclose information to State offices of unemployment compensation.

k. To disclose information to Federal Employees Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

l. To disclose information to the Internal Revenue Service and State and local tax authorities.

m. To disclose information to any source from which additional information is requested relevant to an OGE determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

n. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

o. To disclose information to the authorized employees of another Federal agency that provides the Office of Government Ethics with manual and automated assistance in processing pay, leave, and travel.

p. To disclose information to officials of the Office of Special Counsel, Office of Personnel Management, Federal Labor Relations Authority, Merit Systems Protection Board or the Equal Employment Opportunity Commission when requested in the performance of

their authorized duties, including respectively in connection with cases and appeals, special studies of the civil service and other merit systems, review of personnel matters and practices, investigations of alleged or possible prohibited personnel and discrimination practices, Hatch Act matters, whistleblower protections, compliance with employee selection procedures and investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

q. To disclose information in compliance with orders, interrogatories, and other information requests relevant to garnishment orders that OGE is required to comply with in accordance with 42 U.S.C. 659 (support garnishment) and 5 U.S.C. 5520a (commercial garnishment) to a court of competent jurisdiction, an authorized official, or to an authorized State agency as defined in 5 CFR parts 581 and 582.

r. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

s. To disclose the names, social security numbers, home addresses, date of birth, date of hire, quarterly earnings, employer identifying information, and State of hire of employees to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. 104–193, as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by the name, social security number, or other identifier assigned to the individual on whom they are maintained.

SAFEGUARDS:

Paper records are maintained in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RETENTION AND DISPOSAL:

These records are retained for varying periods of time in accordance with the National Archives and Records Administration General Records Schedule 2 (Payrolling and Pay Administration Records) and 9 (Travel and Transportation Records). Disposal of paper records is by shredding, and of electronic records by deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

c. Dates of employment.

Individuals seeking to determine if a system contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

c. Dates of employment.

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

c. Dates of employment.

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual to whom the record pertains.

b. Office of Government Ethics officials responsible for pay, leave, and travel requirements.

c. Other official personnel documents of the Office of Government Ethics.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/INTERNAL–2

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OGE employees who are assigned OGE telephone extension numbers, persons performing services on behalf of OGE or are authorized to use OGE telephone services, and persons who make or receive telephone calls charged to the Office of Government Ethics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. (Ethics in Government Act of 1978); 44 U.S.C. 3101.

PURPOSE(S):

These records are used to verify telephone usage and to resolve billing discrepancies. The records may also be used to allocate the costs of telephone services to OGE's various offices, to identify unofficial telephone calls and as a basis for taking action when OGE employees or other persons misuse or abuse OGE telephone services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an

indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

c. To disclose information to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

f. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

g. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

h. To disclose information to OGE employees or other persons to determine their individual responsibility for telephone calls.

i. To disclose information to a telecommunications company or another Federal agency providing telephone services or telecommunications services to permit servicing the account;

j. To disclose information in response to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

k. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system, pursuant to 5 U.S.C. 552a(b)(12), to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by name, telephone extension number or some other identifier assigned to the individual on whom they are maintained.

SAFEGUARDS:

Paper records are maintained in file cabinets that may be locked or in specified areas to which only authorized personnel have access. Automated records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RETENTION AND DISPOSAL:

These records are retained and disposed of in accordance with the National Archives and Records Administration General Records Schedule 12. Disposal of manual records is by shredding, and disposal of electronic records is by deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact, the Deputy Director, Office of Administration and Information Management, Office of Government Ethics.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

b. Telephone extension number assigned to the individual by OGE.

c. Description of information being sought, including the time frame of information being sought.

Individuals seeking to determine if a system contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Deputy Director, Administration and Information Management, Office of Government Ethics. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Telephone extension number assigned to the individual by OGE.

c. Description of information being sought, including the time frame of information being sought.

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Telephone extension number assigned to the individual by OGE.

c. Description of information to be amended, including the time frame of information being sought.

Individuals requesting amendment of records must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual on whom the record is maintained.

b. OGE telephone assignment records.

c. Call Detail Reports or telephone bills provided by suppliers of telephone services.

d. Results of administrative inquiries relating to assignment of responsibility for placement of specific long-distance or local calls.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/INTERNAL–3

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former OGE employees who have filed grievances under OGE's administrative grievance procedures or under a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by OGE employees under administrative procedures authorized by 5 CFR part 771, and records of negotiated grievance and arbitration systems that OGE has or may establish through negotiations with recognized labor organizations in accordance with 5 U.S.C. 7121. These files contain all documents related to the grievance which may include statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original decision, and related correspondence and exhibits, employment history, arbitrator's decision or report, record of appeal to the Federal Labor Relations Authority, and a variety of employment and personnel records associated with the grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. (Ethics in Government Act of 1978); 5 U.S.C. 7121; 5 CFR part 771.

PURPOSE(S):

These records are used to process grievances submitted by OGE employees for personal relief in a matter of concern or dissatisfaction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

c. To disclose information by the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

f. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

g. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

h. To disclose information to any source from which additional information is required in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

i. To disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

j. To disclose information to officials of the Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties, including respectively in connection with cases and appeals, special studies of the civil service and other merit systems, review of personnel matters and practices, investigations of alleged or possible prohibited personnel and discrimination practices, Hatch Act matters, whistleblower protections, compliance with employee selection procedures and investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

k. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

l. To provide information to the Department of Labor in carrying out its functions regarding labor-management relations in the Federal service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Paper records are maintained in locked file storage areas or in specified

areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RETENTION AND DISPOSAL:

These records are retained for four years after closing of the case (or as otherwise agreed upon through the collective bargaining process), then disposed of. Disposal of paper records is by shredding, and disposal of electronic records is by deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

NOTIFICATION PROCEDURE:

Individuals may contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics regarding the existence of grievance records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Approximate date of closing of the case and kind of action taken.

c. Organizational component involved.

RECORD ACCESS PROCEDURE:

An individual may request access to the official copy of the grievance file by contacting the Deputy Director, Office of Administration and Information Management, Office of Government Ethics. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Approximate date of closing of the case and kind of action taken.

c. Organizational component involved.

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURE:

Review of requests from individuals seeking amendment of their records which have been the subject of an administrative, judicial, or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment of their records to correct factual errors should contact the OGE Office of Administration and Information Management. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Approximate date of closing of the case and kind of action taken.

c. Organizational component involved.

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual on whom the record is maintained.

b. Testimony of witnesses.

c. OGE officials.

d. Related correspondence from organizations or persons.

e. Union officials (if information deals with a negotiated grievance matter).

f. Department of Labor, Federal Labor Relations Authority, or arbitrators involved in the grievance (if information deals with a negotiated grievance matter).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/INTERNAL–4

SYSTEM NAME:

Computer Systems Activity and Access Records.

SYSTEM LOCATION:

Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who access OGE network computers or mainframe/enterprise servers, including individuals who send and receive electronic communications, access Internet sites, or access system databases, files, or applications from OGE computers or who send electronic communications to OGE computers; and individuals attempting to access OGE computers or systems without authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system of records may include: Records on the use of the interoffice and Internet e-mail systems, including the e-mail address of the sender and receiver of the e-mail message, subject, date, and time; records on user access to OGE's office automation networks; records relating to verification or authorization of an individual's access to systems, files, or applications, such as user IDs, user names, title, and agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. (Ethics in Government Act of 1978); 40 U.S.C. 1441 note.

PURPOSE(S):

The data in this system of records is used by OGE systems and security personnel, or persons authorized to assist these personnel, to plan and manage system services, to monitor for improper use, and to otherwise perform their official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OGE becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply a subpoena issued by a judge of a court of competent jurisdiction.

c. To disclose information to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OGE is authorized to appear, when: OGE; or an employee of OGE in his or her official capacity, or any employee of OGE in his or her individual capacity (where the Department of Justice or OGE has agreed

to represent the employee); or the United States (when OGE determines that litigation is likely to affect OGE), is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OGE is deemed by OGE to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which such records were collected.

f. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

g. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record.

h. To disclose information to a Federal, State, local, tribal or foreign agency, or a private contractor, in response to its request in connection with the hiring or retention of any employee, the issuance of a security clearance, the conduct of a security or suitability investigation, the reporting of an investigation on an employee, the letting of a contract, or the issuance of a grant, license, or other benefit to an employee by the agency, but only to the extent that the information disclosed is relevant and necessary to the agency's decision on the matter.

i. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records may be retrieved by user name, user ID, e-mail address, or other identifying search term employed, depending on the record category.

SAFEGUARDS:

These records are located in locked storage areas with controlled entry, or automated systems to which only authorized personnel have access. The use of password protection identification features and other automated data processing system protection methods also restrict access.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 20, records of verification, authorization, computer system access, and other activities generated by the system are retained for one year, unless required for management review, then deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

b. Assigned computer location.

c. Description of information to be sought (including the time frame during which the record(s) may have been generated).

Individuals seeking to determine if a system contains information about them must also follow OGE's Privacy Act regulations regarding verification of identity (5 CFR part 2606).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Assigned computer location.

c. Description of information being sought (including the time frame during which the record(s) may have been generated).

Individuals requesting access must also follow OGE's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Assigned computer location.

c. Description of information to be amended (including the time frame during which the record(s) may have been generated).

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. Individuals covered by the system.

b. Office of Government Ethics management officials.

c. Computer activity logs and tracking systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OGE/INTERNAL–5

SYSTEM NAME:

Employee Locator and Emergency Notification Records.

SYSTEM LOCATION:

Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Office of Government Ethics.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location and telephone extension of individual OGE employees. The system also contains the home address and telephone number of the employee and the name, relationship, and telephone number of an individual or individuals to contact in the event of a medical or other emergency involving the employee. The system contains an additional freeform ''note'' field for personal medical information for employees who choose to voluntarily complete it.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. (Ethics in Government Act of 1978).

PURPOSE(S):

Information is collected for this system in order to identify an individual for OGE officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job. Also, these records may be used by authorized OGE

personnel to contact individuals working from home or at an authorized alternative worksite or, on infrequent occasions, to contact individuals absent from work about work-related issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained therein may be used:

a. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial or administrative proceeding or in order to comply with a subpoena issued by a judge of a court of competent jurisdiction.

b. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and/or electronic form.

RETRIEVABILITY:

These records are retrieved by the name of the individual on whom they are maintained.

SAFEGUARDS:

Paper records are maintained in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are maintained in a secured electronic system accessible only to on-site OGE employees. An individual OGE employee has access only to his or her own record. In addition, individual records in the system are available to authorized OGE personnel whose duties require access.

RETENTION AND DISPOSAL:

In accordance with the applicable OGE records disposal schedule, these records are retained as long as the individual is an employee of OGE. Disposal of paper records is by shredding, and disposal of electronic records is by deletion.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

NOTIFICATION PROCEDURE:

OGE employees wishing to inquire whether this system of records contains information about them may access the system directly or contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics.

Individuals wishing to make such an inquiry must furnish the following information for their records to be located and identified:

a. Full name.

RECORD ACCESS PROCEDURES:

All current OGE employees have full access to and complete control over their individual record and may access the information at any time, or they may contact the Deputy Director, Office of Administration and Information Management, Office of Government Ethics. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

Individuals requesting access must also follow OGE Privacy Act regulations regarding verification of identify and access to records (5 CFR part 2606).

CONTESTING RECORD PROCEDURES:

OGE employees have full access to and complete control over their individual record and may amend information at any time, or they may contact the Systems Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual on whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–1101 Filed 1–21–03; 8:45 am]
BILLING CODE 6345–02–P

Federal Register

Wednesday,
January 22, 2003

Part III

Department of Housing and Urban Development

Indian Housing Block Grant Allocation Formula: Notice of Proposed Negotiated Rulemaking Committee Membership; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4676–N–05]

Indian Housing Block Grant Allocation Formula: Notice of Proposed Negotiated Rulemaking Committee Membership

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed negotiated rulemaking committee membership.

SUMMARY: HUD announces its list of proposed members for its Indian Housing Block Grant Allocation Formula Negotiated Rulemaking Committee, and requests public comments on the proposed membership. The committee will negotiate a proposed rule to revise the allocation formula used under the Indian Housing Block Grant (IHBG) Program. This document follows publication of July 16, 2001, and July 5, 2002, notices advising the public of HUD's intent to establish the negotiated rulemaking committee and soliciting nominations for membership on the committee.

DATES: *Comment Due Date:* February 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

With tribal participation, HUD developed the March 12, 1998 (63 FR 12349), final rule that implemented the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101 *et seq.*) (NAHASDA). Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), the committee negotiated the March 12, 1998, final rule, which created a new 24 CFR part 1000 containing the Indian Housing Block Grant (IHBG) regulations. NAHASDA established the IHBG Program by reorganizing housing assistance to Native Americans and eliminating and consolidating a number of HUD assistance programs. In addition to creating a single housing assistance program, NAHASDA provides federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government.

On July 5, 2002 (67 FR 44787), HUD published a notice of intent to establish a committee to discuss and negotiate a proposed rule that would revise the allocation formula used under the IHBG Program. The amount of assistance made to Indian tribes is determined using this formula, developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of this formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340). In general, the amount of funding for a tribe is the sum of the formula's need component and the Formula Current Assisted Stock (FCAS) component, subject to a minimum funding amount authorized by § 1000.328. Based on the amount of funding appropriated annually for the IHBG Program, HUD calculates the annual grant for each tribe and conveys this information to Indian tribes. An Indian Housing Plan (IHP) for the tribe is then submitted to HUD. If the IHP is found to be in compliance with the statutory and regulatory requirements, the grant is made. In federal fiscal year 2001, HUD allocated approximately $643.4 million to Indian tribes.

Section 1000.306 of the IHBG Program regulations provides that the allocation formula shall be reviewed within five years after issuance. This 5-year period does not close until March 2003, however, the Omnibus Indian Advancement Act (Pub. L. 105–568, approved December 27, 2000), makes several statutory changes to the IHBG allocation formula that HUD has decided to implement through rulemaking. Accordingly, HUD believes this would be an appropriate time to review the IHBG formula.

HUD first published a notice of intent to establish a negotiated rulemaking committee on July 16, 2001 (66 FR 37098), but due to the events of September 11, 2001, HUD was not able to act on the notice within the timeframes originally intended. Accordingly, HUD published the July 5, 2002, notice, which (1) again advised the public of HUD's intent to establish the negotiated rulemaking committee; (2) solicited public comments on the proposed membership of the committee; (3) explained how persons could be nominated for membership to the committee; and (4) announced the names of those who successfully completed applications under the original July 16, 2001, notice. In particular, HUD solicited committee members from among elected officers of tribal governments (or authorized designees of those tribal governments) with a definable stake in the outcome of a proposed rule.

II. Proposed Membership of Negotiated Rulemaking Committee

This notice announces HUD's list of proposed members to the negotiated rulemaking committee, and requests public comment on the proposed committee membership. In making its proposed selections for membership on the negotiated rulemaking committee, HUD's goal was to establish a committee whose membership reflects a balanced representation of Indian tribes. Selections were based on those nominees who met the eligibility criteria for membership contained in the two **Federal Register** notices. No distinction was made between persons nominated pursuant to the original July 16, 2001, notice and those nominated pursuant to the July 5, 2002, notice. In addition to the tribal members of the committee, there will be two HUD representatives on the negotiated rulemaking committee. After consideration of all the public comments received on this proposed list of committee members, HUD will announce the final composition of the negotiated rulemaking committee in a subsequent **Federal Register** notice.

HUD proposes to make the following selections for tribal membership on the negotiated rulemaking committee:

Eddie L. Tullis, Tribal Chairman, Poarch Band of Creek Indians, Atmore, Alabama.

Joel M. Frank, Housing Director, Seminole Tribe of Florida, Hollywood, Florida.

Beasley Denson, Vice Chief, Mississippi Band of Choctaw Indians, Choctaw, Mississippi.

Bruce K. LaPointe, Development Director, Sault St. Marie Housing Authority, Sault Ste. Marie, Michigan.

Bill Anoatubby, Governor, The Chickasaw Nation, Ada, Oklahoma.

Russell Sossamon, Executive Director, Housing Authority of the Choctaw Nation of Oklahoma, Hugo, Oklahoma.

Robert B. Carlile III, Executive Director, Citizen Potawatomi Nation Housing Authority, Shawnee, Oklahoma.

Marvin Jones, Executive Director, Community Services, Cherokee Nation, Tahlequah, Oklahoma.

Jack Sawyers, Executive Director, Utah Paiute Tribal Housing Authority, Cedar City, Utah.

Robert Gauthier, Executive Director, Salish and Kootenai Housing Authority, Pablo, Montana.

Wayne Ducheneaux, Executive Director, Cheyenne River Housing Authority, Eagle Butte, South Dakota.

Darlene Tooley, Executive Director, Northern Circle Indian Housing Authority, Ukiah, California.

Michael L. Reed, Chief Executive Officer, Cocopah Indian Housing and Development, Somerton, Arizona.

Terry Hudson, Executive Director, Northern Pueblos Housing Authority, Espanola, New Mexico.

Judith Marasco, Executive Director, Yurok Indian Housing Authority, Klamath, California.

Ervin Chavez, Vice Chairman, Board of Commissioners, Navajo Housing Authority, Window Rock, Navajo Nation, Arizona.

Brian Wallace, Chairman, Washoe Tribe of Nevada and California, South Gardnerville, Nevada.

Larry Coyle, Tribal Council Member, Cowlitz Tribe, Oakville, Washington.

Tim King, Tribal Council Member, Samish Indian Nation, Seattle, Washington.

Virginia Brings Yellow, Tribal Council Member, Quinault Indian Nation, Taholah, Washington.

Marty Shuravloff, Executive Director, Kodiak Island Housing Authority, Kodiak, Alaska.

Blake Y. Kazama, Executive Director, Tlingit-Haida Regional Housing Authority, Juneau, Alaska.

Ron Hoffman, Executive Director, Association of Village Council Presidents Regional Housing Authority, Bethel, Alaska.

Carol Gore, Executive Director, Cook Inlet Housing Authority, Anchorage, Alaska.

III. Committee Meetings

At this time, HUD has not yet finalized the schedule for the committee meetings. Advance notice of committee meetings will be published in the **Federal Register**. Meetings of the negotiated rulemaking committee will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public will be provided with an opportunity to make statements during the meeting to the extent that time permits, and file written statements with the committee for its consideration. In the event that the logistics of the committee meetings are changed, HUD will advise the public through **Federal Register** notice.

Dated: January 10, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–1272 Filed 1–21–03; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Wednesday,
January 22, 2003

Part IV

Department of Housing and Urban Development

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2003; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4803–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2003

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: This Notice announces revised Annual Adjustment Factors (AAFs) for adjustment of Section 8 contract rents on housing assistance payment contract anniversaries for calendar months commencing after the date of publication of this Notice. The AAFs are based on a formula using data on residential rent and utilities cost changes from the most current Bureau of Labor Statistics Consumer Price Index (CPI) survey and from HUD's Random Digit Dialing (RDD) rent change surveys.

EFFECTIVE DATE: January 22, 2003.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Housing Voucher Management Operations Division, Office of Housing Voucher Program, Office of Public and Indian Housing, (202) 708–0477 can respond to questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Allison Manning, Office of Special Needs Assistance Programs, Office of Community Planning and Development, (202) 708–1234 for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, (202) 708–3000, for questions relating to all other Section 8 programs. Lynn A. Rodgers, Economic and Market Analysis Division, Office of Policy Development and Research (202) 708–0590, is the contact for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at 1–800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The sections of this Notice explain how AAFs are applied to various Section 8 programs:

- Section 1—How AAFs are used in particular Section 8 project-based assistance programs.
- Section 2—When and how to apply the statutory 1 percent reduction to AAFs.
- Section 3—Procedures for adjusting rent in three section 8 program categories.
- Section 4—How to find the applicable AAF.
- Section 5—Geographic Areas.
- Section 6—How HUD calculates AAFs.

I. Applying AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs, during the original (*i.e.*, pre-renewal) term of the Housing Assistance Payments (HAP) contract. Three categories of Section 8 programs use the AAFs:

Category 1—The Section 8 new construction and substantial rehabilitation programs and the moderate rehabilitation program.

Category 2—The Section 8 loan management (LM) and property disposition (PD) programs.

Category 3—The Section 8 project-based certificate program.

Each Section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the voucher program, or to determine renewal rents or budget-based rents.

- *Renewal Rents.* AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are determined by applying a state-by-state operating cost adjustment factor (OCAF) published by HUD.
- *Voucher Program.* AAFs are not used for any purpose in the Section 8 voucher program.
- *Budget-based Rents.* AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the loan management (LM) program (24 CFR part 886, subpart A) or under the property disposition (PD) program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs or by budget-based adjustments in accordance with 24 CFR 207.19(e). Budget-based adjustments are used for most Section 8/202 projects.
- *Certificate Program.* In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in the tenant-based certificate program. However, this program has now been terminated. All tenancies in the tenant-based certificate program have been converted to the Voucher Program. AAFs are still used for adjustment of contract rent for outstanding HAP contracts under the project-based certificate program.

How AAF Is Applied in the Moderate Rehabilitation Programs

Under the Section 8 moderate rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent. For the other covered programs, the AAF is applied to the whole amount of the pre-adjustment contract rent.

II. When To Use Reduced AAF (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

—For all tenancies assisted in the Section 8 project-based certificate program.

—In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

To implement the law, HUD publishes two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. Each AAF in Table 2 has been computed by subtracting 0.01

from the annual adjustment factor in Table 1.

III. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices. The notices are issued by the Office of Housing and the Office of Public and Indian Housing.

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for three program categories:

—The Section 8 new construction and substantial rehabilitation programs (including the Section 8 state agency program); and the moderate rehabilitation programs (including the moderate rehabilitation single room occupancy program).
—The Section 8 loan management (LM) Program (Part 886, Subpart A) and property disposition (PD) Program (Part 886 Subpart C).
—The Section 8 project-based certificate [PBC] program.

Category 1: Section 8 New Construction, Substantial Rehabilitation and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless the contract rent is reduced by comparability):

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (LM; Part 886, Subpart A) and Property Disposition Program (PD; Part 886 Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

—The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
—The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Project-based Certificate Program (PBC: Part 983)

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 Project-based Certificate program:

—The Table 2 AAF is always used. The Table 1 AAF is not used.
—The Table 2 AAF is always applied before determining comparability (rent reasonableness).
—Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

IV. How to Find the AAF

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent—*i.e.,* where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent—*i.e.,* where the tenant pays for the highest cost utility.

• The applicable AAF is selected as follows:

• Determine whether Table 1 or Table 2 is applicable.

• In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.

• Determine whether the highest cost utility is or is not included in contract rent for the contract unit.

• If highest cost utility is included, select the AAF from the column for ''highest cost included''. If highest cost utility is not included, select the AAF from the column for ''utility excluded'.

V. AAF Areas

Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

—For the metropolitan parts of the ten HUD regions exclusive of CPI areas;
—For the nonmetropolitan parts of these regions; and
—For separate metropolitan AAF areas for which local CPI survey data are available.

With the exceptions discussed below, the AAFs shown in Schedule C use the Office of Management and Budget's (OMB) most current definitions of metropolitan areas. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for AAF areas because of their close correspondence to housing market area definitions.

The exceptions are for certain large metropolitan areas, where HUD considers the area covered by the OMB definition to be larger than appropriate for use as a housing market area definition. In those areas, HUD has deleted some of the counties that OMB had added to its revised definitions. The following counties are deleted from the HUD definitions of AAF areas:

Metropolitan area	Deleted counties
Chicago, IL	DeKalb, Grundy and Kendall Counties.
Cincinnati-Hamilton, OH–KY–IN	Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.
Dallas, TX	Henderson County.
Flagstaff, AZ–UT	Kane County, UT.
New Orleans, LA	St. James Parish.
Washington, DC–VA–MD–WV	Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George, and Warren counties in Virginia.

Separate AAFs are listed in this publication for the above counties. They and the metropolitan area of which they are a part are identified with an asterisk (*) next to the area name. The asterisk indicates that there is a difference between the OMB metropolitan area and the HUD AAF area definition for these areas.

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the appropriate HUD regional metropolitan or nonmetropolitan AAFs are used.

The AAF area definitions shown in Schedule C are listed in alphabetical order by state. The associated HUD region is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan CPI areas have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. Listed after the metropolitan CPI areas (in those states that have such areas) are the non-CPI metropolitan and nonmetropolitan counties of each state. In the six New England States, the listings are for counties or parts of counties as defined by towns or cities.

Puerto Rico and the Virgin Islands use the Southeast AAFs. All areas in Hawaii use the AAFs identified in the Table as ''STATE: Hawaii,'' which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the Pacific/Hawaii nonmetropolitan AAFs. The Anchorage metropolitan area uses the AAFs based on the local CPI survey; all other areas in Alaska use the Northwest/Alaska nonmetropolitan AAFs.

VI. How HUD Calculates AAFS

For Areas With CPI Surveys

(1) Changes in the shelter rent and utilities components were calculated based on the most recent CPI annual average change data.

(2) The ''Highest Cost Utility Included'' column in Schedule C was calculated by weighting the rent and utility components with the corresponding components from the 1990 Census.

(3) The ''Highest Cost Utility Excluded'' column in Schedule C was calculated by eliminating the effect of heating costs that are included in the rent of some of the units in the CPI surveys.

For Areas Without CPI Surveys

(1) HUD used random digit dialing (RDD) regional surveys to calculate AAFs. The RDD survey method is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone calls, and process the responses. RDD surveys are conducted to determine the rent change factors for the metropolitan parts (exclusive of CPI areas) and nonmetropolitan parts of the 10 HUD regions, a total of 20 surveys.

(2) The change in rent with the highest cost utility included in the rent was calculated using the average of the ratios of gross rent in the current year RDD survey divided by the previous year's for the respective metropolitan or nonmetropolitan parts of the HUD region.

(3) The change in rent with the highest cost utility excluded (*i.e.,* paid separately by the tenant) was calculated in the same manner, after subtracting the median values of utilities costs from the gross rents in the two years. The median cost of utilities was determined from the units in the RDD sample which reported that all utilities were paid by the tenant. Accordingly, the Department publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments Programs as set forth in the Tables.

Dated: January 9, 2003.

Mel Martinez,

Secretary.

BILLING CODE 4210–62–P

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
NEW ENGLAND METROPOLITAN	1.034	1.029
NEW YORK/NEW JERSEY METROPOLITAN	1.024	1.014
MID-ATLANTIC METROPOLITAN	1.032	1.023
SOUTHEAST METROPOLITAN	1.029	1.018
MIDWEST METROPOLITAN	1.024	1.022
SOUTHWEST METROPOLITAN	1.034	1.020
GREAT PLAINS METROPOLITAN	1.026	1.025
ROCKY MOUNTAIN METROPOLITAN	1.038	1.024
PACIFIC/HAWAII METROPOLITAN	1.060	1.044
NORTHWEST/ALASKA METROPOLITAN	1.037	1.021
STATE HAWAII	1.006	1.007
MSA ANCHORAGE, AK	1.036	1.024
MSA ATLANTA, GA	1.063	1.053
PMSA BALTIMORE, MD	1.059	1.070
*COUNTY BERKELEY, WV	1.055	1.072
PMSA BOULDER-LONGMONT, CO	1.067	1.056
PMSA BREMERTON, WA	1.076	1.056
PMSA BROCKTON, MA	1.076	1.063
*CHICAGO, IL	1.050	1.053
*COUNTY CLARKE, VA	1.056	1.072
*COUNTY CULPEPER, VA	1.057	1.071

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
NEW ENGLAND NONMETROPOLITAN	1.036	1.034
NEW YORK/NEW JERSEY NONMETROPOLITAN	1.025	1.016
MID-ATLANTIC NONMETROPOLITAN	1.037	1.022
SOUTHEAST NONMETROPOLITAN	1.036	1.017
MIDWEST NONMETROPOLITAN	1.023	1.020
SOUTHWEST NONMETROPOLITAN	1.038	1.016
GREAT PLAINS NONMETROPOLITAN	1.025	1.017
ROCKY MOUNTAIN NONMETROPOLITAN	1.040	1.023
PACIFIC/HAWAII NONMETROPOLITAN	1.046	1.026
NORTHWEST/ALASKA NONMETROPOLITAN	1.033	1.014
PMSA AKRON, OH	1.047	1.029
PMSA ANN ARBOR, MI	1.027	1.025
PMSA ATLANTIC-CAPE MAY, NJ	1.040	1.028
PMSA BERGEN-PASSAIC, NJ	1.039	1.041
PMSA BOSTON, MA-NH	1.075	1.064
PMSA BRAZORIA, TX	1.063	1.036
PMSA BRIDGEPORT, CT	1.039	1.041
*COUNTY BROWN, OH	1.035	1.046
*CINCINNATI, OH-KY-IN	1.039	1.045
PMSA CLEVELAND-LORAIN-ELYRIA, OH	1.046	1.029
*DALLAS, TX	1.050	1.029

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA DANBURY, CT	1.039	1.041
PMSA DENVER, CO	1.068	1.056
PMSA DUTCHESS COUNTY, NY	1.039	1.041
PMSA FLINT, MI	1.027	1.025
PMSA FORT WORTH-ARLINGTON, TX	1.053	1.029
PMSA GALVESTON-TEXAS CITY, TX	1.065	1.036
*COUNTY GRANT, KY	1.035	1.046
*COUNTY GRUNDY, IL	1.049	1.054
PMSA HAMILTON-MIDDLETOWN, OH	1.039	1.045
PMSA HOUSTON, TX	1.059	1.036
PMSA JERSEY CITY, NJ	1.039	1.041
MSA KANSAS CITY, MO-KS	1.059	1.045
PMSA KENOSHA, WI	1.049	1.054
PMSA LAWRENCE, MA-NH	1.076	1.063
PMSA LOWELL, MA-NH	1.075	1.064
PMSA MIAMI, FL	1.041	1.032
PMSA MILWAUKEE-WAUKESHA, WI	1.033	1.026
PMSA MONMOUTH-OCEAN, NJ	1.039	1.041
PMSA NASSAU-SUFFOLK, NY	1.039	1.041
PMSA NEW HAVEN-MERIDEN, CT	1.039	1.041
*COUNTY WESTCHESTER, NY	1.039	1.040
*COUNTY DE KALB, IL	1.049	1.054
PMSA DETROIT, MI	1.027	1.025
PMSA FITCHBURG-LEOMINSTER, MA	1.076	1.063
PMSA FORT LAUDERDALE, FL	1.041	1.032
*COUNTY GALLATIN, KY	1.034	1.047
PMSA GARY, IN	1.048	1.055
PMSA GREELEY, CO	1.068	1.056
PMSA HAGERSTOWN, MD	1.057	1.071
*COUNTY HENDERSON, TX	1.070	1.028
*COUNTY JEFFERSON, WV	1.054	1.072
PMSA KANKAKEE, IL	1.048	1.055
*COUNTY KENDALL, IL	1.049	1.054
*COUNTY KING GEORGE, VA	1.055	1.072
PMSA LOS ANGELES-LONG BEACH, CA	1.061	1.054
PMSA MANCHESTER, NH	1.076	1.063
PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ	1.039	1.041
MSA MINNEAPOLIS-ST. PAUL, MN-WI	1.058	1.058
PMSA NASHUA, NH	1.075	1.064
PMSA NEW BEDFORD, MA	1.076	1.063
PMSA NEW YORK, NY	1.039	1.040
PMSA NEWARK, NJ	1.039	1.041

SCHEDULE C - TABLE 1 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA NEWBURGH, NY-PA	1.039	1.041
*COUNTY OHIO, IN	1.036	1.046
PMSA ORANGE COUNTY, CA	1.060	1.054
PMSA PHILADELPHIA, PA-NJ	1.040	1.027
PMSA PORTLAND-VANCOUVER, OR-WA	1.036	1.030
PMSA RACINE, WI	1.034	1.026
MSA ST. LOUIS, MO-IL	1.047	1.034
MSA SAN DIEGO, CA	1.082	1.081
PMSA SAN JOSE, CA	1.110	1.106
PMSA SANTA ROSA, CA	1.113	1.106
PMSA STAMFORD-NORWALK, CT	1.039	1.041
MSA TAMPA-ST. PETERSBURG-CLEARWATER, FL	1.045	1.042
PMSA VALLEJO-FAIRFIELD-NAPA, CA	1.113	1.106
PMSA VINELAND-MILLVILLE-BRIDGETON, NJ	1.042	1.027
*WASHINGTON, DC-MD-VA	1.061	1.069
PMSA WILMINGTON-NEWARK, DE-MD	1.039	1.028
PMSA OAKLAND, CA	1.111	1.106
PMSA OLYMPIA, WA	1.076	1.056
*COUNTY PENDLETON, KY	1.036	1.046
PMSA PITTSBURGH, PA	1.045	1.013
PMSA PORTSMOUTH-ROCHESTER, NH-ME	1.076	1.063
PMSA RIVERSIDE-SAN BERNARDINO, CA	1.064	1.054
PMSA SALEM, OR	1.037	1.030
PMSA SAN FRANCISCO, CA	1.111	1.106
PMSA SANTA CRUZ-WATSONVILLE, CA	1.112	1.106
PMSA SEATTLE-BELLEVUE-EVERETT, WA	1.069	1.056
PMSA TACOMA, WA	1.074	1.056
PMSA TRENTON, NJ	1.039	1.041
PMSA VENTURA, CA	1.060	1.054
*COUNTY WARREN, VA	1.057	1.071
PMSA WATERBURY, CT	1.039	1.041
PMSA WORCESTER, MA-CT	1.076	1.063

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
NEW ENGLAND METROPOLITAN	1.024	1.019
NEW YORK/NEW JERSEY METROPOLITAN	1.015	1.004
MID-ATLANTIC METROPOLITAN	1.022	1.013
SOUTHEAST METROPOLITAN	1.019	1.008
MIDWEST METROPOLITAN	1.014	1.012
SOUTHWEST METROPOLITAN	1.024	1.010
GREAT PLAINS METROPOLITAN	1.016	1.015
ROCKY MOUNTAIN METROPOLITAN	1.028	1.014
PACIFIC/HAWAII METROPOLITAN	1.050	1.034
NORTHWEST/ALASKA METROPOLITAN	1.027	1.011
STATE HAWAII	1.000	1.000
MSA ANCHORAGE, AK	1.026	1.015
MSA ATLANTA, GA	1.053	1.044
PMSA BALTIMORE, MD	1.049	1.060
*COUNTY BERKELEY, WV	1.045	1.062
PMSA BOULDER-LONGMONT, CO	1.057	1.046
PMSA BREMERTON, WA	1.066	1.046
PMSA BROCKTON, MA	1.066	1.053
*CHICAGO, IL	1.040	1.043
*COUNTY CLARKE, VA	1.046	1.062
*COUNTY CULPEPER, VA	1.047	1.061

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
NEW ENGLAND NONMETROPOLITAN	1.026	1.024
NEW YORK/NEW JERSEY NONMETROPOLITAN	1.016	1.006
MID-ATLANTIC NONMETROPOLITAN	1.027	1.012
SOUTHEAST NONMETROPOLITAN	1.026	1.007
MIDWEST NONMETROPOLITAN	1.013	1.010
SOUTHWEST NONMETROPOLITAN	1.028	1.006
GREAT PLAINS NONMETROPOLITAN	1.016	1.008
ROCKY MOUNTAIN NONMETROPOLITAN	1.030	1.013
PACIFIC/HAWAII NONMETROPOLITAN	1.036	1.016
NORTHWEST/ALASKA NONMETROPOLITAN	1.023	1.004
PMSA AKRON, OH	1.037	1.019
PMSA ANN ARBOR, MI	1.017	1.015
PMSA ATLANTIC-CAPE MAY, NJ	1.030	1.018
PMSA BERGEN-PASSAIC, NJ	1.029	1.031
PMSA BOSTON, MA-NH	1.065	1.054
PMSA BRAZORIA, TX	1.053	1.026
PMSA BRIDGEPORT, CT	1.029	1.031
*COUNTY BROWN, OH	1.025	1.036
*CINCINNATI, OH-KY-IN	1.029	1.035
PMSA CLEVELAND-LORAIN-ELYRIA, OH	1.036	1.019
*DALLAS, TX	1.040	1.019

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA DANBURY, CT	1.029	1.031
PMSA DENVER, CO	1.058	1.046
PMSA DUTCHESS COUNTY, NY	1.029	1.031
PMSA FLINT, MI	1.017	1.015
PMSA FORT WORTH-ARLINGTON, TX	1.043	1.019
PMSA GALVESTON-TEXAS CITY, TX	1.055	1.026
*COUNTY GRANT, KY	1.025	1.036
*COUNTY GRUNDY, IL	1.039	1.044
PMSA HAMILTON-MIDDLETOWN, OH	1.029	1.035
PMSA HOUSTON, TX	1.049	1.026
PMSA JERSEY CITY, NJ	1.029	1.031
MSA KANSAS CITY, MO-KS	1.049	1.035
PMSA KENOSHA, WI	1.039	1.044
PMSA LAWRENCE, MA-NH	1.067	1.053
PMSA LOWELL, MA-NH	1.065	1.054
PMSA MIAMI, FL	1.031	1.022
PMSA MILWAUKEE-WAUKESHA, WI	1.023	1.016
PMSA MONMOUTH-OCEAN, NJ	1.029	1.031
PMSA NASSAU-SUFFOLK, NY	1.029	1.031
PMSA NEW HAVEN-MERIDEN, CT	1.029	1.031
*COUNTY WESTCHESTER, NY	1.030	1.030
*COUNTY DE KALB, IL	1.039	1.044
PMSA DETROIT, MI	1.017	1.015
PMSA FITCHBURG-LEOMINSTER, MA	1.066	1.053
PMSA FORT LAUDERDALE, FL	1.031	1.022
*COUNTY GALLATIN, KY	1.024	1.037
PMSA GARY, IN	1.038	1.045
PMSA GREELEY, CO	1.058	1.046
PMSA HAGERSTOWN, MD	1.047	1.061
*COUNTY HENDERSON, TX	1.060	1.018
*COUNTY JEFFERSON, WV	1.044	1.062
PMSA KANKAKEE, IL	1.038	1.045
*COUNTY KENDALL, IL	1.039	1.044
*COUNTY KING GEORGE, VA	1.045	1.062
PMSA LOS ANGELES-LONG BEACH, CA	1.051	1.044
PMSA MANCHESTER, NH	1.066	1.053
PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ	1.029	1.031
MSA MINNEAPOLIS-ST. PAUL, MN-WI	1.048	1.048
PMSA NASHUA, NH	1.066	1.054
PMSA NEW BEDFORD, MA	1.066	1.053
PMSA NEW YORK, NY	1.030	1.030
PMSA NEWARK, NJ	1.029	1.031

SCHEDULE C - TABLE 2 - CONTRACT RENT AAFS

PREPARED ON 112102

	HIGHEST COST UTILITY INCLUDED	HIGHEST COST UTILITY EXCLUDED
PMSA NEWBURGH, NY-PA	1.029	1.031
*COUNTY OHIO, IN	1.026	1.036
PMSA ORANGE COUNTY, CA	1.050	1.044
PMSA PHILADELPHIA, PA-NJ	1.030	1.017
PMSA PORTLAND-VANCOUVER, OR-WA	1.026	1.020
PMSA RACINE, WI	1.024	1.016
MSA ST. LOUIS, MO-IL	1.037	1.024
MSA SAN DIEGO, CA	1.072	1.071
PMSA SAN JOSE, CA	1.100	1.096
PMSA SANTA ROSA, CA	1.103	1.096
PMSA STAMFORD-NORWALK, CT	1.029	1.031
MSA TAMPA-ST. PETERSBURG-CLEARWATER, FL	1.035	1.032
PMSA VALLEJO-FAIRFIELD-NAPA, CA	1.104	1.096
PMSA VINELAND-MILLVILLE-BRIDGETON, NJ	1.032	1.017
*WASHINGTON, DC-MD-VA	1.051	1.059
PMSA WILMINGTON-NEWARK, DE-MD	1.029	1.018
PMSA OAKLAND, CA	1.102	1.096
PMSA OLYMPIA, WA	1.066	1.046
*COUNTY PENDLETON, KY	1.026	1.036
PMSA PITTSBURGH, PA	1.035	1.003
PMSA PORTSMOUTH-ROCHESTER, NH-ME	1.066	1.053
PMSA RIVERSIDE-SAN BERNARDINO, CA	1.054	1.044
PMSA SALEM, OR	1.027	1.020
PMSA SAN FRANCISCO, CA	1.101	1.096
PMSA SANTA CRUZ-WATSONVILLE, CA	1.102	1.096
PMSA SEATTLE-BELLEVUE-EVERETT, WA	1.059	1.046
PMSA TACOMA, WA	1.064	1.046
PMSA TRENTON, NJ	1.029	1.031
PMSA VENTURA, CA	1.050	1.044
*COUNTY WARREN, VA	1.047	1.061
PMSA WATERBURY, CT	1.029	1.031
PMSA WORCESTER, MA-CT	1.066	1.053

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

ALABAMA (SOUTHEAST)

METROPOLITAN COUNTIES
Autauga, Baldwin, Blount, Calhoun, Colbert, Dale, Elmore, Etowah, Houston, Jefferson, Lauderdale, Lawrence, Lee, Limestone, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, St. Clair, Tuscaloosa

NONMETROPOLITAN COUNTIES
Barbour, Bibb, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dallas, Dekalb, Escambia, Fayette, Franklin, Geneva, Greene, Hale, Henry, Jackson, Lamar, Lowndes, Macon, Marengo, Marion, Marshall, Monroe, Perry, Pickens, Pike, Randolph, Sumter, Talladega, Tallapoosa, Walker, Washington, Wilcox, Winston

ALASKA (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
MSA Anchorage, AK:	Anchorage

NONMETROPOLITAN COUNTIES
Aleutian East, Aleutian West, Bethel, Bristol Bay, Dillingham, Fairbanks North Star, Haines, Juneau, Kenai Peninsula, Ketchikan Gateway, Kodiak Island, Lake & Peninsula, Matanuska-Susitna, Nome, North Slope, Northwest Arctic, Pr. Wales-Outer Ketchikan, , Sitka, Skagway-Yakutat-Angoon, Southeast Fairbanks, Valdez-Cordova, Wade Hampton, Wrangell-Petersburg, Yukon-Koyukuk.

ARIZONA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Coconino, Maricopa, Mohave, Pima, Pinal, Yuma

NONMETROPOLITAN COUNTIES
Apache, Cochise, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz, Yavapai

ARKANSAS (SOUTHWEST)

METROPOLITAN COUNTIES
Benton, Crawford, Craighead, Crittenden, Faulkner, Jefferson, Lonoke, Miller, Pulaski, Saline, Sebastian, Washington

NONMETROPOLITAN COUNTIES
Arkansas, Ashley, Baxter, Boone, Bradley, Calhoun, Carroll, Chicot, Clark, Clay, Cleburne, Cleveland, Columbia, Conway, Cross, Dallas, Desha, Drew, Franklin, Fulton, Garland, Grant, Greene, Hempstead, Hot Spring, Howard, Independence, Izard, Jackson, Johnson, Lafayette, Lawrence, Lee, Lincoln, Little River, Logan, Madison, Marion, Mississippi, Monroe, Montgomery, Nevada, Newton, Ouachita, Perry, Phillips, Pike, Poinsett, Polk, Pope, Prairie, Randolph, Scott, Searcy, Sevier, Sharp, St. Francis, Stone, Union, Van Buren, White, Woodruff, Yell

CALIFORNIA (PACIFIC/HAWAII)

CPI AREAS:	COUNTIES
PMSA Los Angeles-Long Beach, CA:	Los Angeles
PMSA Oakland, CA:	Alameda, Contra Costa
PMSA Orange County, CA:	Orange
PMSA Riverside-San Bernardino, CA:	Riverside, San Bernardino
MSA San Diego, CA:	San Diego
PMSA San Francisco, CA:	Marin, San Francisco, San Mateo
PMSA San Jose, CA:	Santa Clara
PMSA Santa Cruz-Watsonville, CA:	Santa Cruz
PMSA Santa Rosa, CA:	Sonoma
PMSA Vallejo-Fairfield-Napa, CA:	Napa, Solano
PMSA Ventura, CA:	Ventura

METROPOLITAN COUNTIES
Butte, El Dorado, Fresno, Kern, Madera, Merced, Monterey, Placer, Sacramento, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Stanislaus, Sutter, Tulare, Yolo, Yuba

NONMETROPOLITAN COUNTIES
Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Mariposa, Mendocino, Modoc, Mono, Nevada, Plumas, San Benito, Sierra, Siskiyou, Tehama, Trinity, Tuolumne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

COLORADO (ROCKY MOUNTAIN)

CPI AREAS:	COUNTIES
PMSA Boulder-Longmont, CO:	Boulder
PMSA Denver, CO:	Adams, Arapahoe, Denver, Douglas, Jefferson
PMSA Greeley, CO:	Weld

METROPOLITAN COUNTIES
El Paso, Larimer, Mesa, Pueblo

NONMETROPOLITAN COUNTIES
Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Yuma

CONNECTICUT (NEW ENGLAND)

CPI AREAS: COUNTIES	
PMSA Bridgeport, CT	
Fairfield County part:	Bridgeport city, Easton town, Fairfield town, Monroe town, Shelton city, Stratford town, Trumbull town
New Haven County part:	Ansonia city, Beacon Falls town, Derby city, Milford city, Oxford town, Seymour town
PMSA Danbury, CT	
Fairfield County part:	Bethel town, Brookfield town, Danbury city, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
Litchfield County part:	Bridgewater town, New Milford town, Roxbury town, Washington town
PMSA New Haven-Meriden, CT	
Middlesex County part:	Clinton town, Killingworth town
New Haven County part:	Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, North Haven town, Woodbridge town
PMSA Stamford-Norwalk, CT	
Fairfield County part:	Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
PMSA Waterbury, CT	
Litchfield County part:	Bethlehem town, Thomaston town, Watertown town, Woodbury town
New Haven County part:	Middlebury town, Naugatuck borough, Prospect town, Southbury town, Waterbury city, Wolcott town
PMSA Worcester, MA-CT	
Windham County part:	Thompson town
METROPOLITAN COUNTIES	
Hartford County part:	Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford city, Manchester town, Marlborough town, New Britain city, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town
Litchfield County part:	Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town
Middlesex County part:	Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown city, Portland town, Old Saybrook town
New London County part:	Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London city, North Stonington town, Norwich city, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town, Colchester town, Lebanon town
Tolland County part:	Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
Windham County part:	Ashford town, Canterbury town, Chaplin town, Plainfield town, Windham town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NONMETROPOLITAN COUNTIES	
Hartford County part:	Hartland town
Litchfield County part:	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex County part:	Chester town, Deep River town, Essex town, Westbrook town
New London County part:	Lyme town, Voluntown town
Tolland County part:	Union town
Windham County part:	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Wilmington-Newark, DE-MD:	New Castle

METROPOLITAN COUNTIES
Kent

NONMETROPOLITAN COUNTIES
Sussex

DIST. OF COLUMBIA (MID-ATLANTIC)

CPI AREAS: COUNTIES
District of Columbia

FLORIDA (SOUTHEAST)

CPI AREAS:	COUNTIES
PMSA Fort Lauderdale, FL:	Broward
PMSA Miami, FL:	Miami-Dade
MSA Tampa-St. Petersburg-Clearwater, FL	Hernando, Hillsborough, Pasco, Pinellas

METROPOLITAN COUNTIES
Alachua, Bay, Brevard, Charlotte, Clay, Collier, Duval, Escambia, Flagler, Gadsden, Lake, Lee, Leon, Manatee, Marion, Martin, Nassau, Okaloosa, Orange, Osceola, Palm Beach, Polk, Santa Rosa, Sarasota, Seminole, St. Johns, St. Lucie, Volusia

NONMETROPOLITAN COUNTIES
Baker, Bradford, Calhoun, Citrus, Columbia, Desoto, Dixie, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Monroe, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, Washington

GEORGIA (SOUTHEAST)

CPI AREAS:	COUNTIES
*Atlanta, GA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton

METROPOLITAN COUNTIES
Bibb, Bryan, Catoosa, Chatham, Chattahoochee, Clarke, Columbia, Dade, Dougherty, Effingham, Harris, Houston, Jones, Lee, Madison, Mcduffie, Muscogee, Oconee, Peach, Richmond, Twiggs, Walker

NONMETROPOLITAN COUNTIES
Appling, Atkinson, Bacon, Baker, Baldwin, Banks, Ben Hill, Berrien, Bleckley, Brantley, Brooks, Bulloch, Burke, Butts, Calhoun, Camden, Candler, Charlton, Chattooga, Clay, Clinch, Coffee, Colquitt, Cook, Crawford, Crisp, Dawson, Decatur, Dodge, Dooly, Early, Echols, Elbert, Emanuel, Evans, Fannin, Floyd, Franklin, Gilmer, Glascock, Glynn, Gordon, Grady, Greene, Habersham, Hall, Hancock, Haralson, Hart, Heard, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Lamar, Lanier, Laurens, Liberty, Lincoln, Long, Lowndes, Lumpkin, Macon, Marion, Mcintosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Murray, Oglethorpe, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Rabun, Randolph, Schley, Screven, Seminole, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Towns, Treutlen, Troup, Turner, Union, Upson, Ware, Warren, Washington, Wayne, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson, Worth

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

HAWAII (PACIFIC/HAWAII)

CPI AREAS:	COUNTIES
STATE Hawaii:	Hawaii, Honolulu, Kauai, Maui

IDAHO (NORTHWEST/ALASKA)

METROPOLITAN COUNTIES
Ada, Bannock, Canyon

NONMETROPOLITAN COUNTIES
Adams, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Caribou, Cassia, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Gooding, Idaho, Jefferson, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Teton, Twin Falls, Valley, Washington

ILLINOIS (MIDWEST)

CPI AREAS:	COUNTIES
*Chicago, IL:	Cook, Dupage, Kane, Lake, McHenry, Will
*COUNTY De Kalb, IL:	Dekalb
*COUNTY Grundy, IL:	Grundy
PMSA Kankakee, IL:	Kankakee
*COUNTY Kendall, Il:	Kendall
MSA St. Louis, MO-IL:	Clinton, Jersey, Madison, Monroe, St. Clair

METROPOLITAN COUNTIES
Boone, Champaign, Henry, Macon, Mclean, Menard, Ogle, Peoria, Rock Island, Sangamon, Tazewell, Winnebago, Woodford

NONMETROPOLITAN COUNTIES
Adams, Alexander, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Hamilton, Hancock, Hardin, Henderson, Iroquois, Jackson, Jasper, Jefferson, Jo Daviess, Johnson, Knox, La Salle, Lawrence, Lee, Livingston, Logan, Macoupin, Marion, Marshall, Mason, Massac, Mcdonough, Mercer, Montgomery, Morgan, Moultrie, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Saline, Schuyler, Scott, Shelby, Stark, Stephenson, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson

INDIANA (MIDWEST)

CPI AREAS:	COUNTIES
*Cincinnati, OH-KY-IN:	Dearborn
PMSA Gary, IN:	Lake, Porter
*COUNTY Ohio, IN:	Ohio

METROPOLITAN COUNTIES
Adams, Allen, Boone, Clark, Clay, Clinton, De Kalb, Delaware, Elkhart, Floyd, Hamilton, Hancock, Harrison, Hendricks, Howard, Huntington, Johnson, Madison, Marion, Monroe, Morgan, Posey, Scott, Shelby, St. Joseph, Tippecanoe, Tipton, Vanderburgh, Vermillion, Vigo, Warrick, Wells, Whitley

NONMETROPOLITAN COUNTIES
Bartholomew, Benton, Blackford, Brown, Carroll, Cass, Crawford, Daviess, Decatur, Dubois, Fayette, Fountain, Franklin, Fulton, Gibson, Grant, Greene, Henry, Jackson, Jasper, Jay, Jefferson, Jennings, Knox, Kosciusko, La Porte, Lagrange, Lawrence, Marshall, Martin, Miami, Montgomery, Newton, Noble, Orange, Owen, Parke, Perry, Pike, Pulaski, Putnam, Randolph, Ripley, Rush, Spencer, Starke, Steuben, Sullivan, Switzerland, Union, Wabash, Warren, Washington, Wayne, White

IOWA (GREAT PLAINS)

METROPOLITAN COUNTIES
Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, Woodbury

NONMETROPOLITAN COUNTIES
Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Davis, Decatur, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Fremont,

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

IOWA (Cont.)
Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Jones, Keokuk, Kossuth, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth, Wright

KANSAS (GREAT PLAINS)

CPI AREAS:	COUNTIES
MSA Kansas City, MO-KS:	Johnson, Leavenworth, Miami, Wyandotte

METROPOLITAN COUNTIES
Butler, Douglas, Harvey, Sedgwick, Shawnee

NONMETROPOLITAN COUNTIES
Allen, Anderson, Atchison, Barber, Barton, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Doniphan, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Franklin, Geary, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jefferson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Lyon, Marion, Marshall, Mcpherson, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Rawlins, Reno, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wabaunsee, Wallace, Washington, Wichita, Wilson, Woodson

KENTUCKY (SOUTHEAST)

CPI AREAS:	COUNTIES
*Cincinnati, OH-KY-IN:	Boone, Campbell, Kenton
*COUNTY Gallatin, KY:	Gallatin
*COUNTY Grant, KY:	Grant
*COUNTY Pendleton, KY:	Pendleton

METROPOLITAN COUNTIES
Bourbon, Boyd, Bullitt, Carter, Christian, Clark, Daviess, Fayette, Greenup, Henderson, Jefferson, Jessamine, Madison, Oldham, Scott, Woodford

NONMETROPOLITAN COUNTIES
Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boyle, Bracken, Breathitt, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Carroll, Casey, Clay, Clinton, Crittenden, Cumberland, Edmonson, Elliott, Estill, Fleming, Floyd, Franklin, Fulton, Garrard, Graves, Grayson, Green, Hancock, Hardin, Harlan, Harrison, Hart, Henry, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, Mccracken, Mccreary, Mclean, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Owen, Owsley, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe

LOUISIANA (SOUTHWEST)

METROPOLITAN COUNTIES
Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Jefferson, Lafayette, Lafourche, Livingston, Orleans, Ouachita, Plaquemines, Rapides, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Tammany, Terrebonne, Webster, West Baton Rouge

NONMETROPOLITAN COUNTIES
Allen, Assumption, Avoyelles, Beauregard, Bienville, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson Davis, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Pointe Coupee, Red River, Richland, Sabine, St. Helena, St. Mary, Tangipahoa, Tensas, Union, Vermilion, Vernon, Washington, West Carroll, West Feliciana, Winn

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MAINE (NEW ENGLAND)

CPI AREAS: COUNTIES	
PMSA Portsmouth-Rochester, NH-ME	
York County part:	Berwick town, Eliot town, Kittery town, South Berwick town, York town
METROPOLITAN COUNTIES	
Androscoggin County part:	Auburn city, Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town
Cumberland County part:	Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Penobscot County part:	Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island, Veazie town
Waldo County part:	Winterport town
York County part:	Buxton town, Hollis town, Limington town, Old Orchard Beach
NONMETROPOLITAN COUNTIES	
Aroostook, Franklin, Hancock, Kennebec, Knox, Lincoln, Oxford, Piscataquis, Sagadahoc, Somerset, Washington	
Androscoggin County part:	Durham town, Leeds town, Livermore town, Livermore Falls town, Minot town
Cumberland County part:	Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Penobscot County part:	Alton town, Argyle unorg., Bradford town, Bradley town, Burlington town, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penob, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Greenfield town, Howland town, Hudson town, Kingman unorg., Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot unorg., Passadumkeag town, Patten town, Plymouth town, Prentiss plantation, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly unorg., Webster plantation, Whitney unorg., Winn town, Woodville town
Waldo County part:	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
York County part:	Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Baltimore, MD:	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city, Columbia city
PMSA Hagerstown, MD:	Washington
*Washington, DC-MD-VA:	Calvert, Charles, Frederick, Montgomery, Prince George's
PMSA Wilmington-Newark, DE-MD:	Cecil
METROPOLITAN COUNTIES	
Allegany	
NONMETROPOLITAN COUNTIES	
Caroline, Dorchester, Garrett, Kent, Somerset, St. Mary's, Talbot, Wicomico, Worcester	

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MASSACHUSETTS (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH

Bristol County part:	Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Essex County part:	Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town
Middlesex County part:	Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown town, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
Norfolk County part:	Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin town, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
Plymouth County part:	Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
Suffolk county part:	Boston city, Chelsea city, Revere city, Winthrop town
Worcester County part:	Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town

PMSA Brockton, MA

Bristol County part:	Easton town, Raynham town
Norfolk County part:	Avon town
Plymouth County part:	Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town

PMSA Fitchburg-Leominster, MA

Middlesex County part:	Ashby town
Worcester County part:	Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town

PMSA Lawrence, MA-NH

Essex County part:	Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen town, North Andover town, West Newbury town

PMSA Lowell, MA-NH

Middlesex County part:	Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town

PMSA New Bedford, MA

Bristol County part:	Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Plymouth County part:	Marion town, Mattapoisett town, Rochester town

PMSA Worcester, MA-CT

Hampden County part:	Holland town
Worcester County part:	Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MASSACHUSETTS (NEW ENGLAND) cont.

METROPOLITAN COUNTIES	
Barnstable County part:	Barnstable town, Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Berkshire County part:	Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Bristol County part:	Attleboro city, Fall River city, North Attleborough, Rehoboth town, Seekonk town,Somerset town, Swansea town, Westport town
Franklin County part:	Sunderland town
Hampden County part:	Agawam town, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Westfield city, West Springfield town, Wilbraham town
Hampshire County part:	Amherst town, Belchertown town, Easthampton town, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, Southampton town, South Hadley town, Ware town, Williamsburg town

NONMETROPOLITAN COUNTIES	
Dukes	
Nantucket	
Barnstable County part:	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire County part:	Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Franklin County part:	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden County part:	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire County part:	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Worcester County part:	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Ann Arbor, MI:	Lenawee, Livingston, Washtenaw
PMSA Detroit, MI:	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
PMSA Flint, MI:	Genesee

METROPOLITAN COUNTIES

Allegan, Bay, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, Kalamazoo, Kent, Midland, Muskegon, Ottawa, Saginaw, Van Buren

NONMETROPOLITAN COUNTIES

Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Barry, Benzie, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Sanilac, Schoolcraft, Shiawassee, St. Joseph, Tuscola, Wexford

MINNESOTA (MIDWEST)

CPI AREAS:	COUNTIES
MSA Minneapolis-St. Paul, MN-WI:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

METROPOLITAN COUNTIES

Benton, Clay, Houston, Olmsted, Polk, St. Louis, Stearns

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NONMETROPOLITAN COUNTIES
Aitkin, Becker, Beltrami, Big Stone, Blue Earth, Brown, Carlton, Cass, Chippewa, Clearwater, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Faribault, Fillmore, Freeborn, Goodhue, Grant, Hubbard, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac qui Parle, Lake, Lake of the Woods, Le Sueur, Lincoln, Lyon, Mahnomen, Marshall, Martin, Mcleod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Pope, Red Lake, Redwood, Renville, Rice, Rock, Roseau, Sibley, Steele, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Waseca, Watonwan, Wilkin, Winona, Yellow Medicine

MISSISSIPPI (SOUTHEAST)

METROPOLITAN COUNTIES
Desoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison, Rankin

NONMETROPOLITAN COUNTIES
Adams, Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, Franklin, George, Greene, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Lee, Leflore, Lincoln, Lowndes, Marion, Marshall, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Scott, Sharkey, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, Yazoo

MISSOURI (GREAT PLAINS)

CPI AREAS:	COUNTIES
MSA Kansas City, MO-KS:	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
MSA St. Louis, MO-IL:	Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city, Crawford-Sullivan (part)

METROPOLITAN COUNTIES
Andrew, Boone, Buchanan, Christian, Greene, Jasper, Newton, Webster

NONMETROPOLITAN COUNTIES
Adair, Atchison, Audrain, Barry, Barton, Bates, Benton, Bollinger, Butler, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Clark, Cole, Cooper, Crawford, Dade, Dallas, Daviess, Dekalb, Dent, Douglas, Dunklin, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Iron, Johnson, Knox, Laclede, Lawrence, Lewis, Linn, Livingston, Macon, Madison, Maries, Marion, Mcdonald, Mercer, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Nodaway, Oregon, Osage, Ozark, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, Saline, Schuyler, Scotland, Scott, Shannon, Shelby, St. Clair, St. Francois, Ste. Genevieve, Stoddard, Stone, Sullivan, Taney, Texas, Vernon, Washington, Wayne, Worth, Wright

MONTANA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Cascade, Missoula, Yellowstone

NONMETROPOLITAN COUNTIES
Beaverhead, Big Horn, Blaine, Broadwater, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Garfield, Glacier, Golden Valley, Granite, Hill, Jefferson, Judith Basin, Lake, Lewis and Clark, Liberty, Lincoln, Madison, Mccone, Meagher, Mineral, Musselshell, Park, Petroleum, Phillips, Pondera, Powder River, Powell, Prairie, Ravalli, Richland, Roosevelt, Rosebud, Sanders, Sheridan, Silver Bow, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wheatland, Wibaux

NEBRASKA (GREAT PLAINS)

METROPOLITAN COUNTIES
Cass, Dakota, Douglas, Lancaster, Sarpy, Washington

NONMETROPOLITAN COUNTIES
Adams, Antelope, Arthur, Banner, Blaine, Boone, Box Butte, Boyd, Brown, Buffalo, Burt, Butler, Cedar, Chase, Cherry, Cheyenne, Clay, Colfax, Cuming, Custer, Dawes, Dawson, Deuel, Dixon, Dodge, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Garfield, Gosper, Grant, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Hooker, Howard, Jefferson, Johnson, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Mcpherson, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Rock, Saline, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thomas, Thurston, Valley, Wayne, Webster, Wheeler, York

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEVADA (PACIFIC/HAWAII)

METROPOLITAN COUNTIES
Clark, Nye, Washoe

NONMETROPOLITAN COUNTIES
Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Pershing, Storey, White Pine, Carson City

NEW HAMPSHIRE (NEW ENGLAND)

CPI AREAS: COUNTIES

PMSA Boston, MA-NH
Rockingham County part: Seabrook town, South Hampton town

PMSA Lawrence, MA-NH
Rockingham County part: Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town

PMSA Lowell, MA-NH
Hillsborough county pt: Pelham town

PMSA Manchester, NH
Hillsborough county pt: Bedford town, Goffstown town, Manchester city, Weare town
Merrimack county part: Allenstown town, Hooksett town
Rockingham county part: Auburn town, Candia town, Londonderry town

PMSA Nashua, NH
Hillsborough county pt: Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town

PMSA Portsmouth-Rochester, NH-ME
Rockingham County part: Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town
Strafford County part: Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

NONMETROPOLITAN COUNTIES
Belknap
Carroll
Cheshire
Coos
Grafton
Sullivan
Hillsborough County part: Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack County part: Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham County part: Deerfield town, Northwood town, Nottingham town,
Strafford County part: Middleton town, New Durham town, Strafford town

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEW JERSEY (NEW YORK/NEW JERSEY)

CPI AREAS:	COUNTIES
PMSA Atlantic-Cape May, NJ:	Atlantic, Cape May
PMSA Bergen-Passaic, NJ:	Bergen, Passaic
PMSA Jersey City, NJ:	Hudson
PMSA Middlesex-Somerset-Hunterdon, NJ:	Hunterdon, Middlesex, Somerset
PMSA Monmouth-Ocean, NJ:	Monmouth, Ocean
PMSA Newark, NJ:	Essex, Morris, Sussex, Union, Warren
PMSA Philadelphia, PA-NJ:	Burlington, Camden, Gloucester, Salem
PMSA Trenton, NJ:	Mercer
PMSA Vineland-Millville-Bridgeton, NJ:	Cumberland

NEW MEXICO (SOUTHWEST)

METROPOLITAN COUNTIES
Bernalillo, Dona Ana, Los Alamos, Sandoval, Santa Fe, Valencia

NONMETROPOLITAN COUNTIES
Catron, Chaves, Cibola, Colfax, Curry, Debaca, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Lincoln, Luna, Mckinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, San Juan, San Miguel, Sierra, Socorro, Taos, Torrance, Union

NEW YORK (NEW YORK/NEW JERSEY)

CPI AREAS:	COUNTIES
PMSA Dutchess County, NY :	Dutchess
PMSA Nassau-Suffolk, NY:	Nassau, Suffolk
PMSA New York, NY:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
*COUNTY Westchester, NY:	Westchester
PMSA Newburgh, NY-PA:	Orange

METROPOLITAN COUNTIES
Albany, Broome, Cayuga, Chautauqua, Chemung, Erie, Genesee, Herkimer, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saratoga, Schenectady, Schoharie, Tioga, Warren, Washington, Wayne

NONMETROPOLITAN COUNTIES
Allegany, Cattaraugus, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Jefferson, Lewis, Otsego, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tompkins, Ulster, Wyoming, Yates

NORTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES
Alamance, Alexander, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cumberland, Currituck, Davidson, Davie, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Johnston, Lincoln, Madison, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Rowan, Stokes, Union, Wake, Wayne, Yadkin

NONMETROPOLITAN COUNTIES
Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Camden, Carteret, Caswell, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Dare, Duplin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Macon, Martin, Mcdowell, Mitchell, Montgomery, Moore, Northampton, Pamlico, Pasquotank, Pender, Perquimans, Person, Polk, Richmond, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Surry, Swain, Transylvania, Tyrrell, Vance, Warren, Washington, Watauga, Wilkes, Wilson, Yancey

NORTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Burleigh, Cass, Grand Forks, Morton

NONMETROPOLITAN COUNTIES
Adams, Barnes, Benson, Billings, Bottineau, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, Lamoure, Logan, Mchenry, Mcintosh, Mckenzie, Mclean, Mercer, Mountrail, Nelson, Oliver, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sheridan, Sioux, Slope, Stark, Steele, Stutsman, Towner, Traill, Walsh, Ward, Wells, Williams

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

OHIO (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Akron, OH:	Portage, Summit
*COUNTY Brown, OH:	Brown
*Cincinnati, OH-KY-IN:	Clermont, Hamilton, Warren
PMSA Cleveland-Lorain-Elyria, OH:	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
PMSA Hamilton-Middletown, OH:	Butler

METROPOLITAN COUNTIES
Allen, Auglaize, Belmont, Carroll, Clark, Columbiana, Crawford, Delaware, Fairfield, Franklin, Fulton, Greene, Jefferson, Lawrence, Licking, Lucas, Madison, Mahoning, Miami, Montgomery, Pickaway, Richland, Stark, Trumbull, Washington, Wood

NONMETROPOLITAN COUNTIES
Adams, Ashland, Athens, Champaign, Clinton, Coshocton, Darke, Defiance, Erie, Fayette, Gallia, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Knox, Logan, Marion, Meigs, Mercer, Monroe, Morgan, Morrow, Muskingum, Noble, Ottawa, Paulding, Perry, Pike, Preble, Putnam, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Vinton, Wayne, Williams, Wyandot

OKLAHOMA (SOUTHWEST)

METROPOLITAN COUNTIES
Canadian, Cleveland, Comanche, Creek, Garfield, Logan, Mcclain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES
Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Cherokee, Choctaw, Cimarron, Coal, Cotton, Craig, Custer, Delaware, Dewey, Ellis, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Love, Major, Marshall, Mayes, Mccurtain, Mcintosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pushmataha, Roger Mills, Seminole, Stephens, Texas, Tillman, Washington, Washita, Woods, Woodward

OREGON (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
PMSA Portland-Vancouver, OR-WA:	Clackamas, Columbia, Multnomah, Washington, Yamhill
PMSA Salem, OR:	Marion, Polk

METROPOLITAN COUNTIES
Benton, Jackson, Lane

NONMETROPOLITAN COUNTIES
Baker, Clatsop, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler

PENNSYLVANIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
PMSA Newburgh, NY-PA:	Pike
PMSA Philadelphia, PA-NJ:	Bucks, Chester, Delaware, Montgomery, Philadelphia
PMSA Pittsburgh, PA:	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

METROPOLITAN COUNTIES
Berks, Blair, Cambria, Carbon, Centre, Columbia, Cumberland, Dauphin, Erie, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mercer, Northampton, Perry, Somerset, Wyoming, York

NONMETROPOLITAN COUNTIES
Adams, Armstrong, Bedford, Bradford, Cameron, Clarion, Clearfield, Clinton, Crawford, Elk, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mc Kean, Mifflin, Monroe, Montour, Northumberland, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Wayne

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

RHODE ISLAND (NEW ENGLAND)

METROPOLITAN COUNTIES

Bristol County part:	Barrington town, Bristol town, Warren town
Kent County part:	Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town
Newport County part:	Jamestown town, Little Compton town, Tiverton town
Providence County part:	Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city
Washington County part:	Charlestown town, Exeter town, Hopkinton town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town, Westerly town

NONMETROPOLITAN COUNTIES

Newport County part:	Middletown town, Newport city, Portsmouth town
Washington County part:	New Shoreham town

SOUTH CAROLINA (SOUTHEAST)

METROPOLITAN COUNTIES

Aiken, Anderson, Berkeley, Charleston, Cherokee, Dorchester, Edgefield, Florence, Greenville, Horry, Lexington, Pickens, Richland, Spartanburg, Sumter, York

NONMETROPOLITAN COUNTIES

Abbeville, Allendale, Bamberg, Barnwell, Beaufort, Calhoun, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Fairfield, Georgetown, Greenwood, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, Mccormick, Newberry, Oconee, Orangeburg, Saluda, Union, Williamsburg

SOUTH DAKOTA (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Lincoln, Minnehaha, Pennington

NONMETROPOLITAN COUNTIES

Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lyman, Marshall, Mccook, Mcpherson, Meade, Mellette, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, Ziebach

TENNESSEE (SOUTHEAST)

METROPOLITAN COUNTIES

Anderson, Blount, Carter, Cheatham, Chester, Davidson, Dickson, Fayette, Hamilton, Hawkins, Knox, Loudon, Madison, Marion, Montgomery, Robertson, Rutherford, Sevier, Shelby, Sullivan, Sumner, Tipton, Unicoi, Union, Washington, Williamson, Wilson

NONMETROPOLITAN COUNTIES

Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Claiborne, Clay, Cocke, Coffee, Crockett, Cumberland, Dekalb, Decatur, Dyer, Fentress, Franklin, Gibson, Giles, Grainger, Greene, Grundy, Hamblen, Hancock, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Mcminn, Mcnairy, Meigs, Monroe, Moore, Morgan, Obion, Overton, Perry, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Smith, Stewart, Trousdale, Van Buren, Warren, Wayne, Weakley, White

TEXAS (SOUTHWEST)

CPI AREAS: COUNTIES

PMSA Brazoria, TX:	Brazoria
*Dallas, TX:	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
PMSA Fort Worth-Arlington, TX:	Hood, Johnson, Parker, Tarrant
PMSA Galveston-Texas City, TX:	Galveston
*COUNTY Henderson, TX:	Henderson
PMSA Houston, TX:	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller

METROPOLITAN COUNTIES

Archer, Bastrop, Bell, Bexar, Bowie, Brazos, Caldwell, Cameron, Comal, Coryell, Ector, El Paso, Grayson, Gregg, Guadalupe, Hardin, Harrison, Hays, Hidalgo, Jefferson, Lubbock, Mclennan, Midland, Nueces, Orange, Potter, Randall, San Patricio, Smith, Taylor, Tom Green, Travis, Upshur, Victoria, Webb, Wichita, Williamson, Wilson

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

TEXAS (Cont.)

NONMETROPOLITAN COUNTIES

Anderson, Andrews, Angelina, Aransas, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Calhoun, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Colorado, Comanche, Concho, Cooke, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Dewitt, Deaf Smith, Delta, Dickens, Dimmit, Donley, Duval, Eastland, Edwards, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Franklin, Freestone, Frio, Gaines, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grimes, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hill, Hockley, Hopkins, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, Mcculloch, Mcmullen, Medina, Menard, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parmer, Pecos, Polk, Presidio, Rains, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Titus, Trinity, Tyler, Upton, Uvalde, Val Verde, Van Zandt, Walker, Ward, Washington, Wharton, Wheeler, Wilbarger, Willacy, Winkler, Wise, Wood, Yoakum, Young, Zapata, Zavala

UTAH (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES

Davis, Kane, Salt Lake, Utah, Weber

NONMETROPOLITAN COUNTIES

Beaver, Box Elder, Cache, Carbon, Daggett, Duchesne, Emery, Garfield, Grand, Iron, Juab, Millard, Morgan, Piute, Rich, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Wasatch, Washington, Wayne

VERMONT (NEW ENGLAND)

METROPOLITAN COUNTIES

Chittenden County part:	Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Williston town, Winooski city
Franklin County part:	Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town
Grand Isle County part:	Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES

Addison	
Bennington	
Caledonia	
Essex	
Lamoille	
Orange	
Orleans	
Rutland	
Washington	
Windham	
Windsor	
Chittenden County part:	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Franklin County part:	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle County part:	Alburg town, Isle La Motte town, North Hero town

VIRGINIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
*COUNTY Clarke, VA:	Clarke
*COUNTY Culpeper, VA:	Culpeper
*COUNTY King George, VA:	King George
*COUNTY Warren, VA:	Warren

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

VIRGINIA (MID-ATLANTIC) cont.

CPI AREAS:	COUNTIES
*Washington, DC-MD-VA:	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

METROPOLITAN COUNTIES
Albemarle, Amherst, Bedford, Botetourt, Campbell, Charles City, Chesterfield, Dinwiddie, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, Isle of Wight, James City, Mathews, New Kent, Pittsylvania, Powhatan, Prince George, Roanoke, Scott, Washington, York, Bedford city, Bristol city, Charlottesville city, Chesapeake city, Colonial Heights city, Danville city, Hampton city, Hopewell city, Lynchburg city, Newport News city, Norfolk city, Petersburg city, Poquoson city, Portsmouth city, Richmond city, Roanoke city, Salem city, Suffolk city, Virginia Beach city, Williamsburg city

NONMETROPOLITAN COUNTIES
Accomack, Alleghany, Amelia, Appomattox, Augusta, Bath, Bland, Brunswick, Buchanan, Buckingham, Caroline, Carroll, Charlotte, Craig, Cumberland, Dickenson, Essex, Floyd, Franklin, Frederick, Giles, Grayson, Greensville, Halifax, Henry, Highland, King William, King and Queen, Lancaster, Lee, Louisa, Lunenburg, Madison, Mecklenburg, Middlesex, Montgomery, Nelson, Northampton, Northumberland, Nottoway, Orange, Page, Patrick, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell Shenandoah, Smyth, Southampton, Surry, Sussex, Tazewell, Westmoreland, Wise, Wythe

WASHINGTON (NORTHWEST/ALASKA)

CPI AREAS:	COUNTIES
PMSA Bremerton, WA:	Kitsap
PMSA Olympia, WA:	Thurston
PMSA Portland-Vancouver, OR-WA:	Clark
PMSA Seattle-Bellevue-Everett, WA:	Island, King, Snohomish
PMSA Tacoma, WA:	Pierce

METROPOLITAN COUNTIES
Benton, Franklin, Spokane, Whatcom, Yakima

NONMETROPOLITAN COUNTIES
Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, Whitman

WEST VIRGINIA (MID-ATLANTIC)

CPI AREAS:	COUNTIES
*COUNTY Berkeley, WV:	Berkeley
*COUNTY Jefferson, WV:	Jefferson

METROPOLITAN COUNTIES
Brooke, Cabell, Hancock, Kanawha, Marshall, Mineral, Ohio, Putnam, Wayne, Wood

NONMETROPOLITAN COUNTIES
Barbour, Boone, Braxton, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hardy, Harrison, Jackson, Lewis, Lincoln, Logan, Marion, Mason, Mcdowell, Mercer, Mingo, Monongalia, Monroe, Morgan, Nicholas, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Webster, Wetzel, Wirt, Wyoming

WISCONSIN (MIDWEST)

CPI AREAS:	COUNTIES
PMSA Kenosha, WI:	Kenosha
PMSA Milwaukee-Waukesha, WI:	Milwaukee, Ozaukee, Washington, Waukesha
MSA Minneapolis-St. Paul, MN-WI:	Pierce, St. Croix
PMSA Racine, WI:	Racine

METROPOLITAN COUNTIES
Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, La Crosse, Marathon, Outagamie, Rock, Sheboygan, Winnebago

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

WISCONSIN (Cont.)

NONMETROPOLITAN COUNTIES
Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Clark, Columbia, Crawford, Dodge, Door, Dunn, Florence, Fond du Lac, Forest, Grant, Green, Green Lake, Iowa, Iron, Jackson, Jefferson, Juneau, Kewaunee, Lafayette, Langlade, Lincoln, Manitowoc, Marinette, Marquette, Menominee, Monroe, Oconto, Oneida, Pepin, Polk, Portage, Price, Richland, Rusk, Sauk, Sawyer, Shawano, Taylor, Trempealeau, Vernon, Vilas, Walworth, Washburn, Waupaca, Waushara, Wood

WYOMING (ROCKY MOUNTAIN)

METROPOLITAN COUNTIES
Laramie, Natrona

NONMETROPOLITAN COUNTIES
Albany, Big Horn, Campbell, Carbon, Converse, Crook, Fremont, Goshen, Hot Springs, Johnson, Lincoln, Niobrara, Park, Platte, Sheridan, Sublette, Sweetwater, Teton, Uinta, Washakie, Weston

PACIFIC ISLANDS (PACIFIC/HAWAII)

NONMETROPOLITAN COUNTIES
American Samoa, Guam, Northern Mariana Islands, Palau

PUERTO RICO (SOUTHEAST)

METROPOLITAN COUNTIES
Aguada, Aguadilla, Aguas Buenas, Anasco, Arecibo, Barceloneta, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Cidra, Comerio, Corozal, Dorado, Fajardo, Florida, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Juana Diaz, Juncos, Las Piedras, Loiza, Luquillo, Manati, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Penuelas, Ponce, Rio Grande, Sabana Grande, San German, San Juan, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Villalba, Yabucoa, Yauco

NONMETROPOLITAN COUNTIES
Aibonito, Arroyo, Adjuntas, Barranquitas, Ciales, Coamo, Culerbra, Guanica, Guayama, Isabela, Jayuya, Lajas, Lares, Las Marias, Maricao, Maunabo, Orocovis, Patillas, Quebradillas, Rincon, Salinas, San Sebastia, Santa Isabel, Utuado, Vieques

VIRGIN ISLANDS (SOUTHEAST)

NONMETROPOLITAN COUNTIES
Virgin Island

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Federal Register

Wednesday,
January 22, 2003

Part V

Securities and Exchange Commission

17 CFR Part 270

Transactions of Investment Companies With Portfolio and Subadviser Affiliates; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25888; File No. S7–13–02]

RIN 3235–AI28

Transactions of Investment Companies With Portfolio and Subadviser Affiliates

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to rules under the Investment Company Act of 1940 to expand the current exemptions for investment companies (''funds'') to engage in transactions with ''portfolio affiliates''—companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities. The Commission is also adopting one new rule and several rule amendments to permit funds to engage in transactions with subadvisers of affiliated funds. The rules are designed to permit transactions between funds and certain affiliated persons under circumstances where it is unlikely that the affiliate would be in a position to take advantage of the fund.

EFFECTIVE DATE: *Effective Date:* February 24, 2003. *Compliance Date:* April 23, 2003. Section II of this document contains more information on transition prior to the compliance date.

FOR FURTHER INFORMATION CONTACT: William C. Middlebrooks, Jr., Attorney, or Martha B. Peterson, Special Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is adopting new rule 17a–10 (17 CFR 270.17a–10) and amendments to rules 10f–3 (17 CFR 270.10f–3), 12d3–1 (17 CFR 270.12d3–1), 17a–6 (17 CFR 270.17a–6), 17d–1 (17 CFR 270.17d–1), and 17e–1 (17 CFR 270.17e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Investment Company Act'' or ''Act'').[1]

[1] Unless otherwise noted, when we refer to rules 10f–3, 12d3–1, 17a–6, 17a–10, 17d–1, or 17e–1, or any paragraph of those rules, we are referring to the following sections of the Code of Federal Regulations in which each of these rules is published, as amended by this release: 17 CFR 270.10f–3, 17 CFR 270.12d3–1, 17 CFR 270.17a–6, 17 CFR 270.17a–10, 17 CFR 270.17d–1, or 17 CFR 270.17e–1 respectively.

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Executive Summary

The Commission is adopting one new rule and amending five current rules to permit investment companies (''funds'') and certain of their affiliated persons to enter into a variety of transactions and joint arrangements without first obtaining an individual exemptive order from the Commission. Amendments to rules 17a–17d–1(d)(5) expand the circumstances in which a fund may enter into principal transactions and joint arrangements with its portfolio affiliates, and the portfolio affiliates of affiliated funds. New rule 17a–10 and the amendments to rules 10f–3, 12d3–1, and 17e–1 expand the circumstances in which a fund may engage in transactions and arrangements with persons who are affiliated persons of the fund because they provide investment advice with respect to (i) an affiliated fund, or (ii) a portion of the fund's assets that will be unaffected by the transaction.

I. Discussion

The Investment Company Act prohibits certain transactions between investment companies and their affiliated persons (''first-tier affiliates'') and affiliated persons of their affiliated persons (''second-tier affiliates'').[2] The Act's restrictions are designed to prevent these persons from managing the fund for their own benefit, rather than for the benefit of the fund's shareholders.[3] Affiliated persons of a fund include (i) its investment adviser and any subadvisers,[4] (ii) companies the fund controls or five percent (or more) of whose securities are held by the fund, (iii) persons who control the fund, and (iv) persons who are under common control with the fund.[5]

In April 2002, we proposed to exempt certain persons from the Act's restrictions on affiliated transactions.[6] Under the proposal, funds would be permitted to enter into transactions with two types of affiliated persons—

- Portfolio affiliates, which are companies that are affiliated persons of a fund because the fund controls the company, or holds five percent or more of the company's voting securities, and

[2] *See* section 17(a) [15 U.S.C. 80a–17(a)] (prohibiting first- and second-tier affiliates of a fund from borrowing money or other property from, or selling or buying securities or other property to or from the fund, or any company that the fund controls); section 17(d) [15 U.S.C. 80a–17(d)] (making it unlawful for first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of Commission rules); rule 17d–1(a) (prohibiting first- and second-tier affiliates of a fund, the fund's principal underwriter, and affiliated persons of the fund's principal underwriter, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which any such fund or company controlled by a fund is a participant unless an application regarding such enterprise, arrangement or plan has been filed with the Commission and has been granted); section 10(f) [15 U.S.C. 80a–10(f)] (prohibiting a fund from purchasing securities in a primary offering if certain affiliated persons of the fund are members of the underwriting or selling syndicate); section 17(e) [15 U.S.C. 80a–17(e)] (limiting the remuneration that first- and second-tier affiliates of a fund may receive in transactions involving the fund, and companies that the fund controls); and section 12(d)(3) [15 U.S.C. 80a–12(d)(3)] and rule 12d3–1 (together prohibiting a fund from acquiring securities issued by, among others, its own investment adviser).

[3] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency,* 76th Cong., 3d Sess. 37 (1940) (Statement of Commissioner Healy).

[4] Many funds use ''subadvisers'' to help manage fund assets. A subadviser is an investment adviser for purposes of the 1940 Act. The 1940 Act describes an ''investment adviser'' as a person who regularly furnishes advice to the fund with respect to the desirability of investing in, purchasing, or selling securities or other property, or is empowered to determine what securities or other property are to be purchased or sold by the fund. 15 U.S.C. 80a–2(a)(20). The investment adviser may act pursuant to a contract with a fund [15 U.S.C. 80a–2(a)(20)(A)] or pursuant to a contract with an investment adviser that has contracted with the fund. 15 U.S.C. 80a–2(a)(20)(B).

[5] *See* 15 U.S.C. 80a-2(a)(3) (defining ''affiliated person''). Unless otherwise noted, in this release we will use the term ''affiliated person'' to include both first- and second-tier affiliates of a fund.

[6] *See* Transactions of Investment Companies With Portfolio and Subadvisory Affiliates, Investment Company Act Release No. 25557 (Apr. 30, 2002) [67 FR 31081 (May 8, 2002)] (''Proposing Release'').

• Subadviser affiliates, which are persons that are affiliated persons of a fund because they are the fund's subadvisers (first-tier affiliates), affiliated persons of the fund's subadvisers (second-tier affiliates), or subadvisers of other affiliated funds (second-tier affiliates).

We published the proposals in response to the growth of funds and changes in their organization, which have resulted in a growing number of persons with whom a fund may *not* enter into transactions.[7] The amendments were designed to permit transactions between funds and these affiliated persons in circumstances in which it is unlikely that the affiliate would be in a position to take advantage of the fund. We received nine comments on the proposal.[8] The commenters supported the proposed rule and amendments, but suggested changes. Today we are adopting rule 17a–10 and amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 substantially as proposed, with changes that respond to issues raised by commenters.

A. Portfolio Affiliates

1. Second-Tier Affiliates

Rules 17a–6 and 17d–1(d)(5) permit a fund and its portfolio affiliates to engage in principal transactions and enter into joint arrangements that would otherwise be prohibited by section 17(a), or by section 17(d) and rule 17d–1(a). We proposed to amend rules 17a–6 and 17d–1(d)(5) to permit a fund to enter into principal transactions and joint arrangements not only with its own portfolio affiliates, but also with portfolio affiliates of funds that are under common control with the fund. Commenters supported the amendments, and we are adopting them substantially as proposed.[9] The amendments permit funds to enter into transactions with portfolio affiliates of other funds in the same fund complex, subject to the same conditions under which a fund may enter into transactions and arrangements with its own portfolio affiliates.[10]

2. Financial Interests

A fund may not rely on the exemptions in rules 17a–6 and 17d–1(d)(5) to enter into principal transactions or joint arrangements with portfolio affiliates if certain persons (such as the fund's adviser, officers, and principal underwriter, which we will refer to as ''Prohibited Participants''), have a financial interest in a party to the transaction or arrangement (other than the fund itself).[11] We proposed to amend the rules to permit a portfolio affiliate to enter into a transaction or arrangement with the fund if a Prohibited Participant has a financial interest that the fund's board determines is not ''material.''[12] Commenters supported the amendment, and we are adopting it substantially as proposed.[13] In determining whether a financial interest is ''material,'' the board should consider whether the nature and extent of the interest in the transaction is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

3. Time Periods

Currently, rule 17a–6 prohibits transactions with portfolio affiliates when a Prohibited Participant ''has, or within six months prior to the transaction had, or pursuant to an arrangement will acquire'' a financial interest in a party to the transaction.[14] Rule 17d–1(d)(5) prohibits joint transactions with portfolio affiliates if the Prohibited Participant ''is, was, or proposes to be a participant'' in the joint arrangement.[15] The Commission proposed to reconcile these time periods, using the more limited approach of rule 17a–6.[16] Under the proposed amendments, the rule would be available unless a Prohibited Participant had a financial interest in a party to the transaction within the previous six months (as opposed to a financial interest at *any* time in the past).[17] We are adopting the amendment as proposed.[18]

B. Subadviser Affiliates

Most funds are today organized by an investment adviser that advises and provides administrative services to a number of other funds in the same fund complex. As a result, advisers and subadvisers to a fund are not only first-tier affiliates of any funds they advise; they may also be second-tier affiliates of the other funds in the complex.[19]

[7] *Id.* at nn. 12–16 and accompanying text.

[8] The comment letters and a summary of comments prepared by our staff are available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC (File No. S7–21–01). The comment summary is also available on the Commission's Internet Web site.

[9] One technical change we have made is discussed in note 13 *infra*.

[10] *See* note 19, *infra,* discussing when funds in a fund complex are affiliated persons because they are under common control.

[11] *See* rules 17a–6(a) and 17d–1(d)(5)(i) (prohibiting the following persons from participating in, or having a financial interest in a participant in the transaction or arrangement: (1) an officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of, or principal underwriter for the fund; (2) a person directly or indirectly controlling the fund; (3) a person directly or indirectly owning, controlling, or holding with power to vote five percent or more of the outstanding voting securities of the fund; (4) a person directly or indirectly under common control with the fund; and (5) affiliated persons of the foregoing).

[12] *See* Proposing Release, *supra* note 6, at n. 28 and accompanying text. We also proposed to eliminate a condition in rule 17d–1(d)(5) that limited a fund to committing no more than five percent of its assets to a joint enterprise with a portfolio affiliate. *Id.* at nn.32–34 and accompanying text. We received no comment on this proposal and are adopting the amendment as proposed.

[13] One commenter pointed out that a fund might be unable to rely on the proposed rules if an affiliated fund has a financial interest in, but is not affiliated with, the portfolio affiliate. For example, assume that Fund A and Fund B, which have the same principal adviser, own six percent and three percent, respectively, of the outstanding voting securities of Company X. Fund A wants to enter into a transaction to purchase commercial paper issued by Company X. Under the proposed amendments to rule 17a–6, Fund A might have been unable to do so. This is because Fund B, a Prohibited Participant, might be deemed to have a disqualifying ''financial interest'' in a party to the transaction (Company X). A second commenter made a similar observation. We have revised the rules to make clear that this type of transaction is permissible. *See* rule 17a–6(a)(4)(ii) (providing that a fund under common control with the participating fund is not a Prohibited Participant if the fund's ''sole interest in the transaction or a party to the transaction is an interest in [the portfolio affiliate]'').

[14] *See* prior rule 17a–6(a)(5)(ii).

[15] *See* prior rule 17d–1(d)(5)(i).

[16] *See* Proposing Release, *supra* note 6, at nn. 29–30 and accompanying text.

[17] As discussed above, the fund's board of directors could also determine that a financial interest held within the 6 months preceding the transaction is not material.

[18] *See* rules 17a–6(b)(1)(ii) and 17d–1(d)(5)(ii)(B). One commenter argued that the rules' exemptions should be available without regard to the past financial interests of the fund's affiliated persons. The commenter asserted that the past financial interest of an affiliated person would probably not raise the investor protection concerns that the rules are intended to address. We disagree. The rules protect funds in circumstances where the actions of an affiliated person may continue to be influenced by the person's prior financial interests. The rules are, in this respect, analogous to regulations that in other contexts prohibit an employee from working on matters that involve former employers or clients. *See, e.g.,* 17 CFR 210.2–01(c)(2)(iii) and (iv) (describing circumstances in which an accountant is not independent as a result of employment by the accountant of a former employee of the audit client, or employment by the audit client of a former employee of the accountant).

[19] Funds in a fund complex are under the common control of an investment adviser or other person when the adviser or other person exercises a controlling influence over the management or policies of the funds. 15 U.S.C. 80a–2(a)(9). Not all advisers control the funds they advise. The determination of whether a fund is under the

Continued

provisions of the Act may restrict the ability of subadviser affiliates to enter into transactions or arrangements with a fund even if the subadviser affiliate lacks the ability to influence the fund.[20] We proposed one rule and a number of rule amendments to exempt transactions and arrangements between funds and their subadviser affiliates where there is little risk that the affiliated person is in a position to take advantage of the fund.

1. Principal Transactions With Subadvisers: Section 17(a)

Section 17(a) of the Act prohibits a subadviser that is an affiliated person of a fund from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls.[21] We proposed new rule 17a–10 to permit (i) a subadviser of a fund to enter into transactions with funds the subadviser does not advise but which are affiliated persons of a fund that it does advise (*e.g.,* other funds in the fund complex), and (ii) a subadviser (and its affiliated persons) to enter into transactions and arrangements with funds the subadviser does advise, but only with respect to discrete portions of the subadvised fund for which the subadviser does not provide investment advice.[22]

Our proposed exemption was subject to two conditions. First, the subadvisory relationship must be the sole reason why section 17(a) prohibits the transaction; and second, the participating subadviser (*i.e.*, the one who, or whose affiliated person, enters into the transaction or arrangement) and any subadviser of the participating fund or portion of a fund's portfolio (*i.e.*, the one advising the fund to enter into the transaction) must be prohibited by their advisory contracts from consulting with each other concerning securities transactions of the participating fund or portion.[23]

While all commenters supported the new exemption, two asserted that we should not condition the exemption in rule 17a–10 on fund subadvisers being contractually prohibited from consulting with one another concerning securities transactions of the fund.[24] These commenters suggested that the condition was unnecessary because subadvisers rarely, if ever, consult with one another concerning fund transactions. The rule's exemption, however, is premised on the unlikelihood that a subadviser participating in the transaction will be able to influence investment decisions made on behalf of a fund (or portion of a fund) that it does not advise. To the extent that such discussions among subadvisers do occur, they increase the likelihood of reciprocal arrangements. We are, therefore, adopting the provision as proposed, with one revision that clarifies that the prohibitions extend to transaction of the fund in any type of assets, not just securities.[25]

2. Transactions With Subadvisers as Brokers: Section 17(e)

Section 17(e)(2) of the Act generally limits the remuneration that an affiliated person of a fund, acting as broker, may receive for effecting purchases and sales of securities on a securities exchange on behalf of the fund, or a company the fund controls, to the ''usual and customary broker's commission.'' [26] Section 17(e)(2)'s limits apply to purchases and sales made on behalf of a fund by affiliated persons, which include the fund's subadviser (a first-tier affiliate), affiliated persons of the subadviser (second-tier affiliates), and may include subadvisers of funds under common control with the fund (second-tier affiliates).

Rule 17e–1 describes the circumstances in which remuneration received by an affiliated person of a fund qualifies as the ''usual and customary broker's commission.'' The rule, among other things, requires that the fund's board of directors review transactions to determine that they comply with procedures adopted by the board to ensure that the remuneration received by the affiliated person does not exceed the usual and customary broker's commission (''review requirement'').[27] In addition, the fund must maintain a record of the transactions (''recordkeeping requirement'').[28] The review and recordkeeping requirements of rule 17e–1 were designed to permit fund directors and our examination staff to monitor the reasonableness and fairness of remuneration received by affiliated persons of the fund.[29]

We proposed to amend rule 17e–1 to permit a fund's subadviser (or other affiliated person) to receive remuneration for service as a broker without complying with the recordkeeping and review requirements, in circumstances in which the affiliated person has very limited ability to influence decisions regarding execution of fund securities transactions, *i.e.*, when the affiliated person would be eligible to enter into principal transactions with the fund under rule 17a–10.[30] Commenters supported the

control of its adviser, officers or directors depends on all of the relevant facts and circumstances. *See* Proposing Release, *supra* note 6, at n.14. Throughout this release, we presume that the funds in a fund complex are under common control, as funds that are not affiliated persons will not require and thus will not rely on the proposed exemptions.

[20] For example, if Funds A and B are under the common control of a principal adviser, and Subadviser A provides investment advice only with respect to Fund A, then Subadviser A is a second-tier affiliate of Fund B, and subject to all of the Act's prohibitions against transactions involving second-tier affiliates, even though Subadviser A may not have the ability to influence Fund B.

[21] Section 17(a) also prohibits affiliated persons of the subadviser from entering into such transactions if the subadviser is a first-tier affiliate of the fund.

[22] *See* Proposing Release, *supra* note 6, at nn. 42–46 and accompanying text. This second category of relief would thus be available only when a fund has one or more subadvisers, which are responsible for managing discrete portions of the fund's assets. The rule permits the adviser of one portion of the fund to direct that portion to engage in a principal transaction with the subadviser of another portion of the fund's assets.

[23] *See* Proposing Release, *supra* note 6, at nn. 44–45 and accompanying text. We note that while the rule does not contain a condition prohibiting subadvisers and principal advisers from consulting with each other, the principal adviser (like the subadvisers) remains a fiduciary of the fund and may not collaborate with fund subadvisers for purposes of overreaching the fund. *See* Proposing Release, *supra* note 6, at n. 45.

[24] Two commenters requested that we affirmatively state that two funds, with different principal advisers but a common subadviser, are not under common control, and therefore not affiliated persons. One commenter argued that otherwise the rule would be unnecessary, as two funds that share a principal investment adviser, but different subadvisers could not then be under common control. As we stated in the Proposing Release, not all advisers control the funds they advise, and the determination of whether a fund is under the control of its adviser (or subadviser), officers, or directors depends on the relevant facts and circumstances. *See* Proposing Release, *supra* note 6, at n. 14.

[25] Rule 17a–10(a)(2)(i). As we stated in the Proposing Release, we would not view changes to subadvisory contracts that are made to comply with the conditions of this rule to be material for purposes of section 15 of the Investment Company Act [15 U.S.C. 80a–15], and funds would not have to obtain shareholder approval of such changes. *See* Proposing Release, *supra* note 6, at section III.B.2.

[26] Section 17(e)(2) limits the remuneration that an affiliated person of a fund, acting as broker, may receive in connection with a securities transaction to (A) the usual and customary broker's commission for transactions effected on an exchange, (B) two percent of the sales price for secondary distribution, and (C) one percent of the purchase or sale price for other purchases or sales.

[27] Rule 17e–1(a) and (b). The rule also requires that a majority of the directors of the fund not be ''interested persons'' of the fund, that those directors select and nominate any other disinterested directors, and any person who acts as legal counsel for the disinterested directors be an independent legal counsel. Rule 17e–1(c). Section 2(a)(19) identifies persons who are ''interested persons'' of a fund. 15 U.S.C. 80a–2(a)(19).

[28] Rule 17e–1(d).

[29] Agency Transactions by Affiliated Persons on a Securities Exchange, Investment Company Act Release No. 10605 (Feb. 27, 1979) [44 FR 12202 (Mar. 6, 1979)] at n.10 and accompanying text.

[30] *See* Proposing Release, *supra* note 6, at n. 51 and accompanying text.

amendment, which we are adopting as proposed.[31]

3. Purchases During Primary Offering Underwritten by Subadvisers: Section 10(f)

Section 10(f) of the Act prohibits a fund from purchasing any security during an underwriting or selling syndicate if the fund has certain affiliated relationships with a principal underwriter of the security.[32] The section protects fund shareholders by preventing an affiliated underwriter from placing or ''dumping'' unmarketable securities with the fund.[33] Rule 10f–3 provides an exemption from the prohibition in section 10(f) if certain conditions are satisfied.[34] One of rule 10f–3's key conditions is that a fund relying on the rule, together with any other fund advised by the fund's adviser, purchase no more than 25 percent of the offering (''percentage limit'').[35] The purpose of the percentage limit is to provide an indication that a market for the issue exists independent of the adviser and that the securities are not being ''dumped.'' [36]

As we discussed in the Proposing Release, when a fund has multiple advisers or subadvisers, section 10(f) can limit significantly the fund's ability to purchase securities in an offering.[37] Under section 10(f), a fund is subject to the prohibition if *any* of its advisers (in the case of a series fund) or subadvisers (in the case of a multi-managed fund) participated in the underwriting or selling syndicate (or are affiliated persons of participants), regardless of whether the adviser or subadviser that *recommended* the purchase was a participant in the syndicate.[38] We proposed to amend rule 10f–3 to deem each series of a series company (''series'') and the ''managed portions'' [39] of a fund's portfolio (''portion'') to be separate registered investment companies for purposes of section 10(f) and rule 10f–3.[40] As a result, a fund would be subject to the limitation only when an adviser recommending the transaction (or its affiliated person) is a participant in the transaction and thus in a position to take advantage of the fund. Commenters supported this amendment, and we are adopting it substantially as proposed.[41]

We also proposed parallel amendments to rule 10f–3 to revise the way that funds must aggregate purchases to determine compliance with the percentage limits of rule 10f–3 so that only purchases by funds that are advised, and accounts that are controlled, by an investment adviser that is a participant in the underwriting or selling syndicate need be aggregated.[42] If multiple investment advisers provide investment advice to a fund (*e.g.*, a principal adviser and one or more subadvisers) but only one of those advisers (or its affiliated persons) is a participant in the underwriting or selling syndicate, rule 10f–3's percentage limit would apply only to purchases by the funds and accounts of the participating investment adviser.[43]

Although commenters strongly supported limiting the aggregation requirement to purchases by funds and portions of a fund for which an investment adviser that participates in the underwriting syndicate provides investment advice, five commenters opposed requiring aggregation of purchases of other accounts controlled by the investment adviser. While these

[31] Rule 17e–1(b)(3) and (d)(2). Under rule 17e–1, as amended, a fund is exempted from the recordkeeping and review requirements to the same extent that the fund would be permitted to enter into principal transactions with a subadviser. Thus, a fund could use a subadviser that is a first-tier affiliate (because it advises a discrete portion of the fund for which it is not executing a transaction), an affiliated person of such subadviser (a second-tier affiliate of the fund), or a subadviser that is a second-tier affiliate of the fund (because it advises another fund in the fund complex) to execute brokerage transactions without complying with rule 17e–1's recordkeeping and review requirements. Other of our rules requiring funds to retain certain records of brokerage orders by or on behalf of the fund are unaffected by today's amendments. *See* rule 31a–1(b)(5) [17 CFR 270.31a–1(b)(5)].

[32] Section 10(f), in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or any person of which any of the foregoing are affiliated persons.

[33] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency,* 76th Cong., 3d Sess. 35 (1940) (statement of Commissioner Healy).

[34] Rule 10f–3 permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things: (i) The securities either are registered under the Securities Act of 1933 [15 U.S.C. 77a–aa], are part of an issue of government securities, are municipal securities with certain credit ratings, or are offered in certain foreign or private institutional offerings; (ii) the offering involves a ''firm commitment'' underwriting; (iii) the fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering; (iv) the fund purchases the securities from a member of the syndicate other than its affiliated underwriter; (v) the fund's directors have approved procedures for purchases under the rule and regularly review the purchases to determine whether they have complied with the procedures. *See* prior rule 10f–3(b) (new rule 10f–3(c)).

[35] *See* rule 10f–3(c)(7).

[36] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 24775 (Nov. 29, 2000) [65 FR 76189 (Dec. 6, 2000)] at n. 22 and accompanying text.

[37] *See* Proposing Release, *supra* note at n. 59 and accompanying text. A fund may have multiple subadvisers because more than one subadviser has been retained to provide investment advice with respect to various portions of the fund (a ''multi-managed'' fund). A fund may also have multiple advisers because the fund is one of several series of a series company, and different advisers provide investment advice with respect to the assets of the different series.

[38] Unless otherwise noted, we will refer to a subadviser that is a principal underwriter, or an affiliated person of a principal underwriter of a security, as a ''participant'' in the underwriting or selling syndicate.

[39] A portion of a fund's portfolio would be a ''managed portion'' if it is a discrete portion of the portfolio for which a subadviser is responsible for providing investment advice, and the subadviser (i) does not provide investment advice with respect to any other portion of the fund's portfolio, (ii) is prohibited by its advisory contract from consulting with any other investment adviser of the investment company that is a principal underwriter or affiliated person of a principal underwriter concerning securities transactions of the fund, and (iii) is not an affiliated person of any other investment adviser, or any promoter, underwriter, officer, director, member of an advisory board, or employee of the investment company. *See* Proposing Release, *supra* note 6, at n. 62 and accompanying text.

[40] *See* Proposing Release, supra note , at n. 63 and accompanying text.

[41] *See* rule 10f–3(a)(6) (defining ''managed portion'') and 10f–3(b) (deeming the series of a series company and Managed Portions of an investment company to be separate investment companies for purposes of section 10(f) and rule 10f–3). The effect of the amendments is to exempt a purchase of securities by an investment company from the prohibition in section 10(f), if the purchase would not be prohibited if each series or portion were a separately registered investment company.

[42] *See* Proposing Release, *supra* note 6, at nn. 67–68 and accompanying text. We proposed to apply the percentage limit to purchases by the *accounts* controlled by a fund's investment adviser, as well as the *funds* advised by the adviser because we were concerned that rule 10f–3's percentage limit may not provide reliable evidence of a market for the security if most or all of the offering is purchased by fund and non-fund clients of an adviser participating in the underwriting or selling syndicate. The amendment would not require an adviser to aggregate its purchases on behalf of funds and other discretionary accounts with those made by affiliated persons of the adviser. Section 48(a) would prohibit those purchases, however, if they were coordinated purchases made for purposes of circumventing the rule's percentage limits. Section 48(a) of the Act [15 U.S.C. 80a–47(a)].

[43] *See* Proposing Release, *supra* note 6, at nn.67–68 and accompanying text. For example, assume that Principal Adviser A advises three funds (Funds 1, 2, and 3), and Subadviser B subadvises Fund 1, and is the principal adviser to unaffiliated Fund 4. If Principal Adviser A participates in the underwriting syndicate, then the aggregate purchases of Funds 1, 2, and 3 must meet the percentage limit, and if Subadviser B participates in the syndicate then the aggregate purchases of Funds 1 and 4 must meet the percentage limit. If more than one investment adviser of a fund is a participant in the underwriting or selling syndicate then the percentage limit would apply independently with respect to each such investment adviser. *See* Proposing Release, *supra* note , at n. 68. The percentage limit would not apply at all if a fund is prohibited from purchasing a security because a person other than the fund's investment adviser or an affiliated person of the investment adviser (*e.g.*, an officer, director, or employee of the fund) is a participant in the underwriting or selling syndicate.

commenters complained that the amendment could limit the ability of funds to purchase securities in principal offerings, none suggested a way to reconcile the policy underlying rule 10f–3's percentage limit with continuing to permit non-fund accounts advised by the fund's adviser to purchase unlimited amounts of the offering.[44] One fund commenter supporting the proposed requirement cited recent allegations of abusive practices in the market for initial public offerings as illustrative of the conflicts of interest that are inherent when underwriting participants have other business relationships with persons who purchase securities during an offering. This commenter concluded that without a limit on aggregate purchases by non-fund accounts, ''there can be no assurance that the fund was participating in a bona fide offering to the public. * * *'' We agree, and are adopting the amendments substantially as proposed.[45]

At the suggestion of three commenters, we have narrowed the new aggregation requirement. Instead of requiring funds to aggregate purchases by accounts over which the fund adviser ''has discretionary authority or otherwise exercises control,'' amended rule 10f–3 requires aggregation of purchases by other accounts with respect to which the adviser exercises ''investment discretion.''[46] The revised approach is more consistent with the current aggregation provision of rule 10f–3, which assumes that advisers to multiple funds have investment discretion with respect to fund assets.

4. Ownership of Securities Issued by Subadvisers: Section 12(d)(3)

Section 12(d)(3) of the Act generally prohibits funds, and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter (''securities-related businesses'').[47] Rule 12d3–1 permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses,[48] but a fund could not rely on rule 12d3–1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.[49] As a result, a fund could not rely on rule 12d3–1 to acquire securities issued by any of its subadvisers.

Consistent with our other proposals, we proposed to amend rule 12d3–1 to permit a fund to purchase securities issued by its subadvisers (or affiliated persons of its subadvisers) in circumstances in which the subadviser would have little ability to take advantage of the fund, because it is not in a position to direct the fund's securities purchases.[50] The exemption in rule 12d3–1 would be available in circumstances identical to those in which the subadviser (or affiliated person) would be permitted by rule 17a–10 to enter into a principal transaction with the fund.[51] Commenters supported the amendments, which we are adopting as proposed.[52]

II. Effective Date

The Administrative Procedure Act generally provides that a substantive rule may become effective no less than 30 days after publication in the **Federal Register**.[53] Accordingly, new rule 17a–10 and amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 will become effective February 24, 2003.

We are, however, delaying the compliance date with respect to the amendments to rule 10f–3 until April 23, 2003. After April 23, 2003, a fund must comply with all of the conditions in rule 10f–3 as amended in order to rely on the exemption in that rule. A registered investment company that purchases securities between February 24, 2003 and April 23, 2003 may rely on either rule 10f–3 as amended, or rule 10f–3 as it existed prior to today's amendments.

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. As described above, the rule and amendments expand the circumstances under which portfolio companies and subadvisers that are affiliated persons of funds may engage in otherwise prohibited transactions with those funds without first obtaining an exemptive order from the Commission. We have identified certain costs and benefits that may result from today's rulemaking. Because the new rule and rule amendments are exemptive, rather than prescriptive, funds and their affiliated persons are not required to rely on them. Therefore, we assume that funds will rely on the rule and amendments only if the anticipated benefits from such actions would exceed the anticipated costs. In the Proposing Release, we requested comment and specific data regarding the costs and benefits of the proposed amendments. The comments we received are discussed below; we did not receive any data.

A. Benefits

1. In General

We anticipate that funds, their shareholders, advisers and other affiliated persons will benefit from the new rule and amendments. Absent the rule and amendments, we anticipate that affiliated persons, prohibited by the Act from entering into transactions with funds, would continue to seek Commission exemptive orders. The process for obtaining such an exemption

[44] Commenters also argued that other protections in rule 10f–3 make it unlikely that securities could be ''dumped'' in the fund. These commenters, in effect, argued that there should be no quantitative limitation on the amount of purchase under the rule, an approach the Commission rejected when we amended the rule in 1997. *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)].

[45] *See* rule 10f–3(c)(7).

[46] Rule 10f–3(c)(7)(i). Under the rule the purchase must be aggregated if (i) the adviser has investment discretion over the account, and (ii) the adviser has exercised such discretion in connection with the purchase.

[47] With minor exceptions, section 12(d)(3) prohibits a fund from purchasing or otherwise acquiring ''any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is [an] investment adviser.''

[48] Paragraph (a) of rule 12d3–1 permits a fund to acquire any security issued by any person that, in its most recent fiscal year, derived 15 percent or less of its gross revenues from securities-related activities unless the fund would control such person after the acquisition. Paragraph (b)(3) of rule 12d3–1 permits a fund to invest up to five percent of the value of its total assets in the securities of an issuer that derives more than 15 percent of its gross revenues from securities-related activities. Rule 12d3–1(d)(1) defines ''securities related activities'' as a person's activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b], or an investment adviser to a registered investment company.

[49] Rule 12d3–1(d)(8) provides that any class or series of an investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series, shall be treated as if it is a registered investment company. Accordingly, a fund that is a series of a series company may rely on rule 12d3–1 to purchase securities issued by subadvisers (and persons affiliated with those subadvisers) of the other series of the investment company.

[50] *See* Proposing Release, *supra* note 6, at n. 77 and accompanying text.

[51] *Id.* The exemption in rule 12d3–1 is available if (i) the subadviser is not, and is not an affiliated person of, an investment adviser that provides advice with respect to the portion of the fund that is acquiring the securities, and (ii) the advisory contracts of the subadviser, and any subadviser that is advising the purchasing portion of the fund, prohibit them from consulting with each other concerning securities transactions of the fund, and limit their responsibility in providing advice to providing advice with respect to discrete portions of the fund's portfolio. *See* rule 12d3–1(c)(3)(i) and (ii).

[52] Rule 12d3–1(c)(3).

[53] 5 U.S.C. 553(d).

imposes direct costs on applicants.[54] The new rule and amendments will benefit funds, their shareholders, and their affiliated persons by eliminating these costs.

The application process also produces indirect costs, because funds and their affiliated persons forego beneficial transactions rather than undertake to obtain an exemptive order. Funds and their affiliated persons may forego transactions either because the anticipated benefit of the transaction does not exceed the cost of obtaining an exemptive order, or because the transaction is time-sensitive, and it is not feasible to obtain an exemptive order quickly enough to permit the transaction to occur.[55] Encouraging beneficial transactions by eliminating these potentially significant costs and delays will likely be a benefit resulting from these changes. As discussed in the Proposing Release, eliminating direct and indirect costs of filing applications may also reduce factors that discriminate against smaller funds and smaller transactions.[56]

2. Portfolio Affiliates

The amendments to rules 17a–6 and 17d–1(d)(5) regarding transactions and joint arrangements with portfolio affiliates may expand the range of possible partners with which funds may enter into transactions and joint arrangements. Funds, their second-tier portfolio affiliates, and their shareholders each may benefit from the transactions and arrangements made possible by the amendments.[57] Similarly, amending rules 17a–6 and 17d–1(d)(5), to provide that the term ''financial interest'' does not include interests that the fund's board of directors finds to be not material, may expand the range of possible partners for transactions and joint arrangements with funds by making the rules' exemptions more widely available.[58] A similar benefit may result from the removal of rule 17d–1(d)(5)'s condition limiting a fund to committing no more than five percent of its assets in any particular joint enterprise.

3. Subadviser Affiliates

Principal Transactions

Rule 17a–10 may benefit subadvisers and funds by allowing subadviser affiliates to enter into principal transactions with (i) affiliated funds of the subadvised fund and (ii) those portions of the subadvised fund for which the subadviser does not provide investment advice. By broadening the markets available to both buyers and sellers, rule 17a–10 may permit sellers to obtain more favorable pricing, and may make a wider range of investment options available to buyers.

Brokerage Transactions

Rule 17e–1 will, under certain circumstances, permit subadvisers and their affiliated persons to receive remuneration when acting as broker for an affiliated fund, without complying with all of the rule's recordkeeping and transaction review requirements. Our staff estimates that boards of directors of funds that employ affiliated brokers currently spend approximately 12.5 hours per year per fund conducting the required review. Our staff further estimates that a fund that uses in-house counsel to assist fund directors in reviewing these transactions incurs a cost of $775 per year for counsel, based on an hourly cost for in-house counsel of $62 per hour.[59] Funds incur the additional incremental cost of maintaining records of the transaction. The amendments to rule 17e–1 may benefit funds and their shareholders by allowing funds to avoid these burdens.

Purchases During Primary Offerings Underwritten by Affiliated Subadvisers

The amendments to rule 10f–3 may benefit funds by broadening their investment options. The Act prohibits a series of a series company from purchasing securities during an underwriting or selling syndicate of which an adviser to any of the series (or affiliated person of such adviser) is a member. By providing that, for purposes of section 10(f) and rule 10f–3, a series of a series company is a separate investment company, the proposed amendments to rule 10f–3 could broaden (i) the investment opportunities available to such funds and (ii) the range of possible purchasers when a subadviser participates in an underwriting syndicate. Funds, fund shareholders, and subadvisers all may benefit from this change.

The Act also does not distinguish between a fund with multiple subadvisers that manage discrete portions of its portfolio, and a fund whose subadvisers manage the portfolio in its entirety. The amendments to rule 10f–3 that deem separately managed portions of a fund's portfolio to be separate investment companies for purposes of section 10(f) and rule 10f–3 may increase the investment opportunities of that type of fund. Quantifying the potential magnitude of these benefits may not be possible.

The amendment to the percentage limit of rule 10f–3 also may broaden the investment options available to funds. The Act does not distinguish between purchases by funds or portions of funds that are recommended by a subadviser that is (or is an affiliated person of) a participant in the underwriting or selling syndicate, and purchases by funds or portions of funds for which *other* subadvisers provide investment advice. By providing that the percentage limit of rule 10f–3 applies only to purchases by funds, portions of funds, and accounts for which participants provide investment advice, the amendments to rule 10f–3 may increase the investment opportunities of a fund with multiple subadvisers that manage discrete portions of its portfolio.

The amendments to the percentage limit may reduce the cost of complying with rule 10f–3 because purchases made by funds that are *not* advised by participants in the underwriting or selling syndicate will no longer need to be aggregated with purchases made by funds that *are* advised by advisers that are participants in the underwriting. Because multiple advisers will no longer be required to coordinate their actions, the amendment may make it easier to ensure compliance with the rule, and less expensive to collect and compile the relevant information.

Ownership of Securities Issued by Subadvisers

Similarly, the amendments to rule 12d3–1 may also benefit funds by broadening their investment options. Amending rule 12d3–1 to permit a fund to acquire securities issued by one of its subadvisers, or an affiliated person of one of its subadvisers, when the subadviser is not in a position to influence the decision by the fund to purchase the securities, may increase the investment opportunities of these funds.

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[54] *See* Proposing Release, *supra* note 6, at section III.A.1. (estimating the cost of applying for an order exempting affiliated persons from the prohibitions of sections 17(a), 17(d), 17(e), 10(f), and 12(d)(3) to be between $20,000 and $80,000, depending on the complexity of the application).

[55] *See* Proposing Release, *supra* note 6, at nn. 79–80 (estimating the length of time between filing of applications and granting of exemptive orders to be between 4 to 17 months, depending on the complexity of the application).

[56] *See* Proposing Release, *supra* note 6, at section III.A.1.

[57] It has not been possible to quantify this benefit, which varies on a case-by-case basis depending on the characteristics of individual transactions and joint arrangements and on the extent to which funds involved in such transactions have second-tier portfolio affiliates.

[58] Expansion of the exemption in this manner may also impose costs by eliminating what has been a ''bright line'' prohibition and expanding the opportunities for harmful transactions.

[59] *See* notes 85–87 *infra*, and accompanying text.

B. Costs

The Commission anticipates that funds, their shareholders, and their advisers and other affiliated persons may incur certain costs, including certain direct costs from complying with the new rule and amendments. The exemptions resulting from today's rulemaking also may encourage shifts in market behavior that could create direct and indirect costs for certain entities. Furthermore, the exemptions may allow funds to proceed with disadvantageous transactions that existing restrictions would have prevented.

1. Portfolio Affiliates

We do not anticipate that there will be any costs associated with the amendments to rules 17a–6 and 17d–1(d)(5), other than a cost associated with the provision that a fund's board of directors may find that an interest is not material and hence not a ''financial interest.'' Because a fund may avail itself of the amendment only if the fund's directors make certain findings and record the basis for those findings in the minutes of their meeting, the benefit of the change is minimally offset by the cost to the fund of the board fulfilling its obligations. Based on discussions with industry representatives, our staff estimates that reviewing the materiality of a Prohibited Participant's interest in a party to the transaction and recording the basis for those findings would require approximately 11.2 hours and $1,140 per meeting, in addition to the discussions that occur during the board meeting.[60] This cost may partially offset the benefits of the exemption, including the direct benefit of allowing a fund to forego the cost of applying for exemptive relief from the restrictions of section 17(a) and rule 17d–1. We assume that if the cost of holding such a meeting exceeds the benefit to the fund, the fund will either forego the opportunity to engage in the transaction or require the Prohibited Participant to divest itself of its interest.

2. Subadvisory Affiliates

A fund and its advisers and subadvisers may incur costs in complying with the requirements of rule 17a–10 and amended rules 10f–3, 12d3–1, and 17e–1 that partially offset the benefits of these rules. In order for a fund to rely on the exemptions in the rule and amendments, the fund's advisory contracts must include certain provisions that they may not currently include. Because such contracts generally are subject to renewal at regular intervals, adding such provisions may not entail additional administrative costs. As discussed above, we do not view the required changes to subadvisory contracts to be material for purposes of section 15 of the Investment Company Act and, as a result, funds will not have to obtain shareholder approval of the change.[61] Based on discussions with industry representatives, the staff estimates that drafting and executing revised subadvisory contracts would require approximately 6 hours. Assuming that all funds that are advised by subadvisers modify their advisory contracts in order that they and their affiliated funds may rely on the exemptions, the rule and rule amendments would create an estimated initial one-time cost of approximately $836,000.[62]

Rule 17e–1 may result in increased costs to funds as a result of higher brokerage commissions. By exempting the commissions paid to certain affiliated subadvisers from the requirement for scrutiny by the board of directors, rule 17e–1 may allow a rise in brokerage commissions that the fund pays. Whether this increased cost occurs will depend on the extent to which the scrutiny currently required of boards of directors has resulted in findings that commissions to be paid by funds are excessive. Although we requested comment on the frequency of boards of directors making such findings, we received no comments on this issue.

The amendments to rule 10f–3 may encourage division of funds into discrete parts managed by multiple subadvisers. A fund that is advised by subadvisers that participate, or are affiliated with persons that participate, in underwriting syndicates may have an incentive to reorganize in order to take advantage of the opportunity to have a part of the fund purchase securities during the syndicate. Likewise, a fund that is advised by a subadviser that participates in underwriting syndicates may have an incentive to reorganize in order to comply with the percentage limit of rule 10f–3 and take advantage of the opportunity to purchase securities in reliance on that rule's exemption. Such a development would benefit subadvisers, but the use of additional subadvisers could also result in increased costs to funds and their shareholders.[63]

Investment advisers may incur costs in connection with the new requirement of rule 10f–3 that fund purchases be aggregated with purchases of certain non-funds for purposes of compliance with the rule's percentage limits. Commenters suggested that fund complexes that automate such calculations could incur significant one-time costs in connection with reconfiguring existing information collection systems to accommodate the amendments.[64] We assume that if the cost of compiling the required information would outweigh the benefits of relying on the exemption in rule 10f–3, then these advisers will forego the exemption in rule 10f–3, and comply with the prohibition in section 10(f).

IV. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[65]

Portfolio Affiliates

The amendments to rules 17a–6 and 17d–1(d)(5) will expand the circumstances under which funds, and companies they control, may enter into principal transactions and joint arrangements with portfolio affiliates without first obtaining an exemptive order from the Commission. The amendments will permit funds and companies they control to engage in otherwise prohibited transactions with: (i) A broader array of first-tier portfolio affiliates than the rules currently permit; and (ii) certain second-tier portfolio affiliates.[66] We anticipate that the amendments will promote efficiency and competition. The Act's restrictions on transactions involving funds and their affiliated persons respond to market failures that can occur when an affiliated person, in a position to influence the management of a fund, causes the fund to behave in a manner

[60] *See* notes 68–74 *infra*, and accompanying text.

[61] *See* note 25 *supra.*

[62] *See* notes 75–78 *infra*, and accompanying text.

[63] It has been estimated that expenses of subadvised funds are on average 15–20% higher than those of non-subadvised funds. *See* James Paton, *Outside Fund Managers Don't Bring Outsize Benefits*, Reuters, Sept. 11, 2002, *available in* Westlaw, Reuters Eng. News Serv. File and Bridget O'Brian, Fund Track, *Some Fund Managers Hand Reins to 'Subadvisers,'* WALL ST. J., Aug. 31, 2001, at C1.

[64] One commenter stated that for a large fund complex with many non-fund accounts the cost of such a system reconfiguration would be $300,000 at a minimum.

[65] 15 U.S.C. 80a–2(c).

[66] An additional change to rule 17d–1(d)(5) would remove existing limitations regarding the percentage of a fund's assets that the fund could commit to a joint enterprise.

that benefits the affiliated person, rather than the shareholders of the fund. The amendments to rules 17a–6 and 17d–1(d)(5) will permit market forces to operate to allocate resources in circumstances where market failure is unlikely because the affiliated person is not in a position to influence fund management. The amendments to rules 17a–6 and 17d–1(d)(5) are unrelated to, and we believe will have no effect on, capital formation.

Subadvisory Affiliates

New rule 17a–10 and the amendments to rules 17e–1, 10f–3, and 12d3–1 permit funds, and companies controlled by funds, to engage in transactions with subadvisers that are affiliated persons of the fund, but which are not in a position to influence the fund's decision to participate in the transaction. The amendments to rule 17e–1 permit, in limited circumstances, an affiliated subadviser acting as broker to receive remuneration without complying with certain conditions of the rule. As in the case of the amendments to rules 17a–6 and 17d–1(d)(5), we anticipate that these amendments will promote efficiency and competition by permitting market forces to operate in circumstances where there is limited chance of market failure. We also believe that the amendments to rule 10f–3 may enhance capital formation by enabling funds to purchase securities during primary offerings, when they would otherwise be prohibited from doing so without a Commission exemptive order.

The rule and amendments may, however, adversely affect competition by promoting increased concentration of the market for subadvisory services. Rule 17a–10 may reduce or eliminate any incentive to select subadvisers specifically because they are not affiliated with a large number of funds, which may encourage funds to shift subadvisory business toward certain particularly successful subadvisers. The amendments to rule 10f–3 may remove an incentive to select subadvisers that are not either major participants or affiliated with major participants in the underwriting business. By removing disincentives against market concentration, these rules may have the effect of encouraging concentration in the market for subadvisory services.

V. Paperwork Reduction Act

Certain provisions of rule 17a–10 and the amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520] (''PRA''). The Commission submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (i) ''Rule 10f–3 under the Investment Company Act of 1940, Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate''; (ii) ''Rule 12d3–1 under the Investment Company Act of 1940, Exemption of acquisitions of securities issued by persons engaged in securities related businesses''; (iii) ''Rule 17a–6 under the Investment Company Act of 1940, Exemption for transactions with portfolio affiliates''; (iv) ''Rule 17a–10 under the Investment Company Act of 1940, Exemption for transactions with certain subadvisory affiliates''; (v) ''Rule 17d–1 under the Investment Company Act of 1940, Applications regarding joint enterprises or arrangements and certain profit-sharing plans''; and (vi) ''Rule 17e–1 under the Investment Company Act of 1940, Brokerage transactions on a securities exchange.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.[67] The OMB control number for rule 17a–10 is 3235–0563, and the control numbers for amended rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 are 3235–0226, 3235–0561, 3235–0564, 3235–0562, and 3235–0217, respectively.

A. Portfolio Affiliates

Rules 17a–6 and 17d–1

Under rules 17a–6 and 17d–1, a fund or company controlled by a fund may enter into principal and joint transactions with a portfolio affiliate, or an affiliated person of a portfolio affiliate, as long as certain other Prohibited Participants are not parties to the transaction and do not have a financial interest in a party to the transaction. Rules 17a–6 and 17d–1 include a list of interests that are not ''financial interests'' for purposes of the rule.[68] We have amended that list to provide that ''financial interest'' does not include an interest that the fund's board of directors finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.[69] This aspect of the amendments creates a paperwork burden.

Based on public filings with the Commission, the Commission's staff estimates that 200 registered investment companies are affiliated persons of 900 issuers as a result of the investment company's ownership or control of the issuer's voting securities, and that there are approximately 1,400 such affiliate relationships.[70] The staff estimates that annually there will be a total of 1,400 principal transactions under rule 17a–6[71] and 1,400 joint arrangements under rule 17d–1(d)(5),[72] and that for each rule approximately 420 transactions or arrangements will result in a paperwork burden.[73]

The Commission staff estimates that compliance with the amendments will impose a burden of .2 hours (12 minutes) for each transaction for which there is a paperwork burden.[74] Therefore we estimate 84 burden hours to be associated with the amendments to rule 17a–6 annually and 84 burden

[67] Rule 10f–3 was adopted pursuant to authority set forth in sections 10(f), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), and 80a–37(a)]. Rule 12d3–1 was adopted pursuant to authority set forth in sections 6(c) and 38(a) of the Act. [15 U.S.C. 80a–6(c)]. Rule 17a–6 was adopted pursuant to authority set forth in sections 6(c), 17(b), 31(a), and 38(a) of the Act [15 U.S.C. 80a–17(b)]. Rule 17d–1 was adopted pursuant to authority set forth in sections 6(c), 17(d), and 38(a). Rule 17e–1 was adopted pursuant to authority set forth in sections 6(c), 31(a), and 38(a) of the Act.

[68] Rules 17a–6(b)(1) and 17d–1(d)(5)(iii).

[69] Rules 17a–6(b)(1)(H) and 17d–1(d)(8). Collection of this information is necessary to obtain the benefit of the exemption in the proposed rule amendments.

[70] For purposes of this analysis, the staff estimates that investment companies will enter into one principal transaction and one joint arrangement each year with each of their portfolio affiliates, and that in thirty percent of those transactions and arrangements a Prohibited Participant will have a financial interest in a party to the transaction that the board of directors of the affected investment company will consider for purposes of determining whether that financial interest is material.

[71] 1,400 affiliate relationships × 1 principal transaction per year = 1,400 transactions under rule 17a–6.

[72] 1,400 affiliate relationships × 1 joint arrangement per year = 1,400 joint arrangements under rule 17d–1(d)(5). As discussed above, in addition to expanding fund business opportunities by allowing funds to transact with a wider range of portfolio affiliates, we have also eliminated the limit imposed by rule 17d–1(d)(5) on the percentage of assets a fund can commit to any given joint enterprise. Rule 17d–1(d)(5)(ii). The staff does not anticipate that allowing funds to increase the size of their commitment to a joint transaction will result in an increase in the expected number of such transactions.

[73] 1,400 transactions or arrangements × .30 (percentage of transactions or arrangements in which a Prohibited Participant is assumed to have a financial interest) = 420.

[74] The staff estimates the hourly burden to comply with the board of director's obligation to make a finding as to the materiality of a prohibited person's financial interest in a transaction to be 11 hours. The staff estimates that funds will spend .2 hours complying with the requirement that the basis for the board's findings be recorded in the minutes of its meeting.

hours to be associated with the amendments to rule 17d–1 annually.

B. Subadviser Affiliates

The Commission staff estimates that 1,900 portfolios of approximately 800 investment companies use the services of one or more subadvisers.[75] Based on discussions with industry representatives, the Commission staff estimates that it will require approximately 6 hours to draft and execute revised subadvisory contracts (5 staff attorney hours, 1 supervisory attorney hour), in order for funds and subadvisers to be able to rely on the exemptions in rule 17a–10 and the proposed amendments to rule 10f–3, 17e–1, and 12d3–1.[76] Assuming that all funds that are advised by subadvisers modify their advisory contracts in this manner, the new rule and rule amendments will create an estimated initial one-time burden of approximately 11,400 burden hours. The total estimated first year cost of these burden hours is $836,000.[77]

ESTIMATED ONE TIME BURDEN HOURS AND COST OF SUBADVISORY RULE AND AMENDMENTS

Number of funds modifying contracts	Staff attorney hours	Supervisory attorney hours	Total burden hours	Cost per staff attorney hour	Cost per supervisory attorney hour	Total cost of se 75burden hours
1,900	5	1	11,400	$62	$130	$836,000

Rule 17a–10 and the amendments to rules 10f–3, 12d3–1, and 17e–1 would require virtually identical modifications to fund advisory contracts. The Commission staff assumes that funds will rely equally on the exemptions in all of these rules, and therefore the burden hours associated with the required contract modifications should be apportioned equally among the four rules. Therefore the estimated one-time burden hours associated with rules 17a–10, 10f–3, 12d3–1, and 17e–1 are 2,850 hours for each rule (11,400 total burden hours for all of the rules/four rules), and the estimated one-time cost of these burden hours is $209,000 for each rule ($836,000/four rules).[78]

The staff estimates that a total of 60 funds will enter into subadvisory agreements each year after the first year in which the rule and rule amendments are adopted.[79] Assuming that each of these funds enters into a contract that permits it and its affiliated funds to rely on the exemptions in rule 17a–10, and the amendments to rules 10f–3, 12d3–1, and 17e–1, an estimated 360 burden hours (90 hours per rule) will be associated with these rules annually, with an associated cost of $26,400 ($6,600 per rule).[80]

Proposed Amendments to Rule 10f–3

Rule 10f–3 currently has an estimated burden of 4,407.5 hours at a cost of $793,752. This burden estimate will change as a result of the amendments to rule 10f–3. As we discuss above,[81] we assume that all funds that are advised by subadvisers will modify their subadvisory contracts so as to allow the fund and their affiliated funds to rely on the proposed exemptions. The staff calculates that the estimated one-time burden hours associated with the proposed amendments to rule 10f–3 would be 2,850 hours, with an estimated one-time cost of $209,000,[82] and an ongoing estimated burden of 90 hours for subsequent years, with an estimated cost associated with this hour burden of $6,600 for subsequent years.[83] We estimate that these additional burdens will, for the first year following adoption, increase the burden hours of compliance with rule 10f–3 from the current 4,407.5 hours at a cost of $793,752, to 7,257.5 hours at a cost of $1,002,760. We anticipate that in the years following the adoption of amended rule 10f–3 the ongoing estimated burden hours for rule 10f–3 will be 4,497.5 hours at a cost of $800,360.[84]

Rule 17e–1

Based on an analysis of investment company filings, the staff estimates that approximately 293 investment companies use at least one affiliated broker and that each of these investment companies spends an estimated 12.5 hours per year (at a cost of $775 per year) complying with rule 17e–1's requirements that (i) the fund retain records of transactions entered into pursuant to the rule (''recordkeeping requirement''), and (ii) the fund's directors review those transactions quarterly (''review requirement'').[85] Based on conversations with representatives of investment companies, the staff estimates that the amendments to rule 17e–1 would exempt approximately 40 percent of transactions that occur under rule 17e–1 from the rule's recordkeeping and review requirements.

The Commission staff estimates, therefore, that the amendments to rule 17e–1 will, in this respect, *decrease* the rule's information collection burden to 2,200 hours,[86] at a cost of $136,422 per year.[87]

[75] *See* Proposing Release, *supra* note 6, at n. 13 and accompanying text.

[76] The fund's advisory contracts must include these conditions in order for the fund to obtain the benefit of the exemptions in the new rule and rule amendments.

[77] (5 in-house staff attorney hours × $62 = $310) + (1 deputy general counsel hour x $130 = $130) = $440. $440 × 1,900 funds = $ 836,000.

[78] The amendments to rule 17e–1 will also, as discussed below, decrease the burden hours associated with that rule.

[79] Based on an analysis of investment company filings, the staff estimates that approximately 250 funds are created annually. Assuming that the number of these funds that will use the services of subadvisers is proportionate to the number of funds that currently use the services of subadvisers, then approximately 50 new funds will enter into subadvisory agreements each year. The Commission staff estimates, based on an analysis of investment company filings, that an additional 10 funds, currently in existence, will employ the services of subadvisers for the first time each year.

[80] 6 hours × 60 funds = 360 total hours. $440 × 60 funds = $26,400.

[81] *See supra* note 78 and accompanying text.

[82] *Id.*

[83] *Id.*

[84] We are not seeking approval for any collection of information based on burden data for any but the first year following adoption of these proposals. The information regarding burden hours and costs incurred after the first year of adoption is provided to give a fuller understanding of our proposals' long-term impact on the fund industry.

[85] In calculating the total annual cost of complying with amended rule 17e–1, the Commission staff assumes that the entire burden would be attributable to professionals with an average hourly wage rate of $62 per hour.

[86] 293 transactions × 12.5 hours = 3,663 hours if adopted; 60% of the 293 transactions (or 176 transactions) would proceed under rule 17e–1. 176 transactions (60% of the 293 transactions anticipated to be impacted by rule) × 12.5 hours = 2,200 hours.

[87] 3,663 hours × $62 = $227,106; 2,200 hours × $62 = $136,400.

ESTIMATED REDUCTION IN BURDEN HOURS AND COST OF RULE 17E–1

[effect of exemption from review and recordkeeping requirements]

	Number funds relying on rule 17e–1	Number funds subject to record-keeping and review requirements	Burden hours of recordkeeping and review requirements	Total burden hours of rec-ordkeeping and review re-quirements	Cost per hour of record-keeping and review require-ments	Total cost of burden hours
Prior Rule	293	293	12.5	3,663	$62	$227,106
As Amended	293	176	12.5	2,200	62	136,400

This reduction will be offset to some extent by the increase in estimated burden hours described above with respect to the required modifications of the funds' investment advisory contracts. Therefore rule 17e–1, as amended, will impose an estimated burden of 5,050 hours ($345,400) in the first year after the amendments are adopted, and an estimated burden of 2,290 hours ($143,000) in subsequent years.

VI. Summary of Final Regulatory Flexibility Analysis

We have prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604 regarding the adoption of new rule 17a–10 and amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 under the Investment Company Act. A summary of the Initial Regulatory Flexibility Analysis (''IRFA''), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. The following summarizes the FRFA.

A. Need for New Rule and Amendments

The FRFA summarizes the background of the amendments. The FRFA also discusses the reasons for the new rule and amendments and the objectives of, and legal basis for, these rulemaking initiatives. Those items are discussed in the release. The FRFA discusses the effect of the new rule and amendments on small entities.

B. Significant Issues Raised by Public Comment

The Commission received no comments on the IRFA.

C. Small Entities Subject to the New Rule and Amendments

The FRFA discusses the effect of the amendments on small entities. For purposes of the Regulatory Flexibility Act,[88] a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[89] An investment adviser is a small entity if it (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year.[90] An issuer, other than an investment company, is a small entity if its total assets on the last day of its most recent fiscal year were $5 million or less and it is engaged or proposing to engage in an offering of securities which does not exceed the dollar limitation prescribed by section 3(b) of the Securities Act of 1933. The staff estimates, based upon Commission filings, that there are approximately 3,650 active registered management investment companies, of which approximately 200 are small entities. The staff further estimates that there are approximately 7,560 registered investment advisers, of which approximately 430 are small entities.[91]

Funds and portfolio companies that are small entities will be able to rely on the amendments to rules 17a–6 and 17d–1(d)(5) if they satisfy the rules' conditions. Funds and investment advisers that are small entities will be able to rely on the amendments to rule 10f–3, 12d3–1, 17e–1, and rule 17a–10, if they meet the conditions of those rules.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Portfolio Affiliates—Rules 17a–6 and 17d–1(d)(5)

The expanded exemptions in rules 17a–6 and 17d–1(d)(5) permitting second-tier portfolio affiliates and funds to enter into principal transactions and joint arrangements would not impose any new reporting, recordkeeping, or other compliance requirements on funds or portfolio affiliates that are small entities.

Subadviser Affiliates—Rules 17a–10, 10f–3, 12d3–1, and 17e–1

The rule and rule amendments permitting subadvisers to enter into otherwise prohibited transactions and arrangements with affiliated funds will impose compliance and recordkeeping requirements on funds and subadvisers that rely on the rules' exemptions, as the funds' advisory contracts will be required to prohibit the fund's subadvisers from consulting with one another concerning the fund's securities transactions.[92] Based on discussions with industry representatives, our staff estimates that modifying advisory contracts in this manner will require 6 hours, at a cost of approximately $440 per fund. While small funds and small advisers are unlikely to be disproportionately impacted by this one-time requirement, a fund complex that includes a large number of funds advised by subadvisers may experience economies of scale, as the amendments to its advisory contracts will be largely duplicative.

E. Agency Action To Minimize Effect on Small Entities

The FRFA explains that we have not identified any federal rules that duplicate or conflict with the rule and rule amendments. The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the

[88] 5 U.S.C. 601–612.

[89] 17 CFR 270.0–10.

[90] 17 CFR 275.0–7.

[91] The staff was unable to determine from Commission filings the number of fund portfolio affiliates that are also small entities. We estimate that 875 companies are portfolio affiliates of funds.

[92] *See, e.g.,* rule 12d3–1(c)(3)(ii)(A).

use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

We do not believe that special compliance, timetable, or reporting requirements or an exemption from coverage of the rule for small entities would be consistent with investor protection. Similarly, any further clarification, consolidation, or simplification of the reporting requirements for small entities could compromise the safeguards embodied in the new rule and amendments. The new rule and rule amendments use performance, rather than design standards, in the sense that they require the fund's board of directors to make certain findings,[93] and the fund's advisory contracts to include certain conditions,[94] rather than specifying the basis for the board's findings, or the specific language to be included in the advisory contracts.

VII. Statutory Authority

The Commission has adopted amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 and new rule 17a–10 under the Investment Company Act pursuant to authority set forth in sections 6(c), 10(f), 17(b), 17(d), 31(a), and 38(a) of the Investment Company Act.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rules

For reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.10f–3 is amended by:

a. Redesignating paragraph (b) as paragraph (c);

b. Adding paragraphs (a)(6), (a)(7), (a)(8), and new paragraph (b);

c. Revising the paragraph heading in newly redesignated paragraph (c); and

d. Revising newly redesignated paragraph (c)(7).

[93] In the case of the amendments to rules 17a–6 and 17d–1(d)(5).

[94] In the case of rule 17a–10 and the amendments to rules 17e–1, 10f–3, and 12d3–1.

The additions and revisions read as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

(a) * * *

(6) *Managed portion* of a portfolio of a registered investment company means a discrete portion of a portfolio of a registered investment company for which a subadviser is responsible for providing investment advice, provided that:

(i) The subadviser is not an affiliated person of any investment adviser, promoter, underwriter, officer, director, member of an advisory board, or employee of the registered investment company; and

(ii) The subadviser's advisory contract:

(A) Prohibits it from consulting with any subadviser of the investment company that is a principal underwriter or an affiliated person of a principal underwriter concerning transactions of the investment company in securities or other assets; and

(B) Limits its responsibility in providing advice to providing advice with respect to such portion.

(7) *Series of a series company* means any class or series of a registered investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series.

(8) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

(b) *Exemption for purchases by series companies and investment companies with managed portions.* For purposes of this section and section 10(f) of the Act (15 U.S.C. 80a–10(f)), each Series of a Series Company, and each Managed Portion of a registered investment company, is deemed to be a separate investment company. Therefore, a purchase or acquisition of a security by a registered investment company is exempt from the prohibitions of section 10(f) of the Act if section 10(f) of the Act would not prohibit such purchase if each Series and each Managed Portion of the company were a separately registered investment company.

(c) *Exemption for other purchases.*

* * *

(7) *Percentage limit.* (i) *Generally.* The amount of securities of any class of such issue to be purchased by the investment company, aggregated with purchases by any other investment company advised by the investment company's investment adviser, and any purchases by another account with respect to which the investment adviser has investment discretion if the investment adviser exercised such investment discretion with respect to the purchase, does not exceed the following limits:

(A) If purchased in an offering other than an Eligible Rule 144A Offering, 25 percent of the principal amount of the offering of such class; or

(B) If purchased in an Eligible Rule 144A Offering, 25 percent of the total of:

(*1*) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; plus

(*2*) The principal amount of the offering of such class in any concurrent public offering.

(ii) *Exemption from percentage limit.* The requirement in paragraph (c)(7)(i) of this section applies only if the investment adviser of the investment company is, or is an affiliated person of, a principal underwriter of the security; and

(iii) *Separate aggregation.* The requirement in paragraph (c)(7)(i) of this section applies independently with respect to each investment adviser of the investment company that is, or is an affiliated person of, a principal underwriter of the security.

* * * * *

3. Section 270.12d3–1 is amended by revising paragraph (c) and adding paragraph (d)(9) before the note:

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, this section does not exempt the acquisition of:

(1) A general partnership interest; or

(2) A security issued by the acquiring company's promoter, principal underwriter, or any affiliated person of such promoter, or principal underwriter; or

(3) A security issued by the acquiring company's investment adviser, or an affiliated person of the acquiring company's investment adviser, other than a security issued by a subadviser or an affiliated person of a subadviser of the acquiring company provided that:

(i) *Prohibited relationships.* The subadviser that is (or whose affiliated person is) the issuer is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the acquiring company that is acquiring the securities, or of any promoter, underwriter, officer, director, member of

an advisory board, or employee of the acquiring company;

(ii) *Advisory contract.* The advisory contracts of the Subadviser that is (or whose affiliated person is) the issuer, and any Subadviser that is advising the portion of the acquiring company that is purchasing the securities:

(A) Prohibit them from consulting with each other concerning transactions of the acquiring company in securities or other assets, other than for purposes of complying with the conditions of paragraphs (a) and (b) of this section; and

(B) Limit their responsibility in providing advice to providing advice with respect to a discrete portion of the acquiring company's portfolio.

(d) * * *

(9) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

* * * * *

4. Section 270.17a–6 is revised to read as follows:

§ 270.17a–6 Exemption for transactions with portfolio affiliates.

(a) *Exemption for transactions with portfolio affiliates.* A transaction to which a fund, or a company controlled by a fund, and a portfolio affiliate of the fund are parties is exempt from the provisions of section 17(a) of the Act (15 U.S.C. 80a–17(a)), provided that none of the following persons is a party to the transaction, or has a direct or indirect financial interest in a party to the transaction other than the fund:

(1) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of or principal underwriter for the fund;

(2) A person directly or indirectly controlling the fund;

(3) A person directly or indirectly owning, controlling or holding with power to vote five percent or more of the outstanding voting securities of the fund;

(4) A person directly or indirectly under common control with the fund, other than:

(i) A portfolio affiliate of the fund; or

(ii) A fund whose sole interest in the transaction or a party to the transaction is an interest in the portfolio affiliate; or

(5) An affiliated person of any of the persons mentioned in paragraphs (a)(1)–(4) of this section, other than the fund or a portfolio affiliate of the fund.

(b) *Definitions.* (1) *Financial interest.* (i) The term *financial interest* as used in this section does not include:

(A) Any interest through ownership of securities issued by the fund;

(B) Any interest of a wholly-owned subsidiary of a fund;

(C) Usual and ordinary fees for services as a director;

(D) An interest of a non-executive employee;

(E) An interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person;

(F) An interest of a bank arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural person, unless it arises from a loan to a person who is an officer, director or executive of a company which is a party to the transaction, or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of a company which is a party to the transaction;

(G) An interest acquired in a transaction described in paragraph (d)(3) of § 270.17d–1; or

(H) Any other interest that the board of directors of the fund, including a majority of the directors who are not interested persons of the fund, finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.

(ii) A person has a financial interest in any party in which it has a financial interest, in which it had a financial interest within six months prior to the transaction, or in which it will acquire a financial interest pursuant to an arrangement in existence at the time of the transaction.

(2) *Fund* means a registered investment company or separate series of a registered investment company.

(3) *Portfolio affiliate of a fund* means a person that is an affiliated person (or an affiliated person of an affiliated person) of a fund solely because the fund, a fund under common control with the fund, or both:

(i) Controls such person (or an affiliated person of such person); or

(ii) Owns, controls, or holds with power to vote five percent or more of the outstanding voting securities of such person (or an affiliated person of such person).

5. Section 270.17a–10 is added to read as follows:

§ 270.17a–10 Exemption for transactions with certain subadvisory affiliates.

(a) *Exemption.* A person that is prohibited by section 17(a) of the Act (15 U.S.C. 80a–17(a)) from entering into a transaction with a fund solely because such person is, or is an affiliated person of, a subadviser of the fund, or a subadviser of a fund that is under common control with the fund, may nonetheless enter into such transaction, if:

(1) *Prohibited relationship.* The person is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the fund for which the transaction is entered into, or of any promoter, underwriter, officer, director, member of an advisory board, or employee of the fund.

(2) *Prohibited conduct.* The advisory contracts of the subadviser that is (or whose affiliated person is) entering into the transaction, and any subadviser that is advising the fund (or portion of the fund) entering into the transaction:

(i) Prohibit them from consulting with each other concerning transactions for the fund in securities or other assets; and

(ii) If both such subadvisers are responsible for providing investment advice to the fund, limit the subadvisers' responsibility in providing advice with respect to a discrete portion of the fund's portfolio.

(b) *Definitions.*

(1) *Fund* means a registered investment company and includes a separate series of a registered investment company.

(2) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

6. Section 270.17d–1 is amended by revising paragraphs (d)(5) and (d)(6) to read as follows:

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(d) * * *

(5) Any joint enterprise or other joint arrangement or profit-sharing plan (''joint enterprise'') in which a registered investment company or a company controlled by such a company, is a participant, and in which a portfolio affiliate (as defined in § 270.17a–6(b)(3)) of such registered investment company is also a participant, provided that:

(i) None of the persons identified in § 270.17a–6(a) is a participant in the joint enterprise, or has a direct or indirect financial interest in a participant in the joint enterprise (other than the registered investment company);

(ii) *Financial interest.*

(A) The term *financial interest* as used in this section does not include:

(*1*) Any interest through ownership of securities issued by the registered investment company;

(*2*) Any interest of a wholly owned subsidiary of the registered investment company;

(*3*) Usual and ordinary fees for services as a director;

(*4*) An interest of a non-executive employee;

(*5*) An interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person;

(*6*) An interest of a bank arising from a loan to a person who is an officer, director, or executive of a company which is a participant in the joint transaction or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of a company which is a participant in the joint transaction;

(*7*) An interest acquired in a transaction described in paragraph (d)(3) of this section; or

(*8*) Any other interest that the board of directors of the investment company, including a majority of the directors who are not interested persons of the investment company, finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.

(B) A person has a financial interest in any party in which it has a financial interest, in which it had a financial interest within six months prior to the investment company's participation in the enterprise, or in which it will acquire a financial interest pursuant to an arrangement in existence at the time of the investment company's participation in the enterprise.

(6) The receipt of securities and/or cash by an investment company or a controlled company thereof and an affiliated person of such investment company or an affiliated person of such person pursuant to a plan of reorganization: *Provided,* That no person identified in § 270.17a–6(a)(1) or any company in which such a person has a direct or indirect financial interest (as defined in paragraph (d)(5)(iii) of this section):

* * * * *

7. Section 270.17e–1 is amended by revising paragraphs (b)(3) and (d) to read as follows:

§ 270.17e–1 Brokerage transactions on a securities exchange.

* * * * *

(b) * * *

(3) Determines no less frequently than quarterly that all transactions effected pursuant to this section during the preceding quarter (other than transactions in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a–10) were effected in compliance with such procedures;

* * * * *

(d) The investment company:

(1) Shall maintain and preserve permanently in an easily accessible place a copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section; and

(2) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a record of each such transaction (other than any transaction in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a–10) setting forth the amount and source of the commission, fee or other remuneration received or to be received, the identity of the person acting as broker, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

By the Commission.

Dated: January 14, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–1229 Filed 1–21–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
January 22, 2003

Part VI

The President

Memorandum of January 17, 2003—Presidential Determination on Pedestal Actuator Imports From the People's Republic of China

Federal Register
Vol. 68, No. 14
Wednesday, January 22, 2003

Presidential Documents

Title 3—

The President

Memorandum of January 17, 2003

Presidential Determination on Pedestal Actuator Imports from the People's Republic of China

Memorandum for the United States Trade Representative

Pursuant to section 421 of the Trade Act of 1974, as amended (19 U.S.C. 2451), I have determined the action I will take with respect to the affirmative determination of the United States International Trade Commission (USITC) regarding imports of pedestal actuators from China. The USITC, on the basis of its investigation (No. TA–421–1), determined that pedestal actuators from China are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products.

After considering all relevant aspects of the investigation, I have determined that providing import relief for the U.S. pedestal actuator industry is not in the national economic interest of the United States. In particular, I find that the import relief would have an adverse impact on the United States economy clearly greater than the benefits of such action.

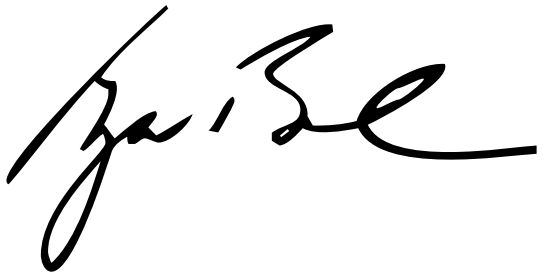
In determining not to provide import relief, I considered its overall costs to the U.S. economy. The facts of this case indicate that imposing the USITC's recommended quota would not likely benefit the domestic producing industry and instead would cause imports to shift from China to other offshore sources.

Even if the quota were to benefit the primary domestic producer, the cost of the quota to consumers, both the downstream purchasing industry and users of the downstream products, would substantially outweigh any benefit to producers' income. The USITC's analysis confirms this conclusion.

In addition, downstream industries are already under pressure to migrate production offshore to compete with lower-cost imports of finished products. Higher component costs resulting from import relief would add to this pressure. Given the significantly larger number of workers in the downstream purchasing industry when compared with the domestic pedestal actuator industry, I find that imposing import restrictions would do more economic harm than good.

Finally, a quota would negatively affect the many disabled and elderly purchasers of mobility scooters and electric wheelchairs, the primary ultimate consumers of pedestal actuators.

You are authorized and directed to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, January 17, 2003.

[FR Doc. 03–1591
Filed 1–21–03; 8:45 am]
Billing code 3190–01–P

Federal Register

Wednesday,
January 22, 2003

Part VII

The President

Notice of January 20, 2003—Continuation of the National Emergency With Respect to Terrorists Who Threaten To Disrupt the Middle East Peace Process

Federal Register
Vol. 68, No. 14
Wednesday, January 22, 2003

Presidential Documents

Title 3—

The President

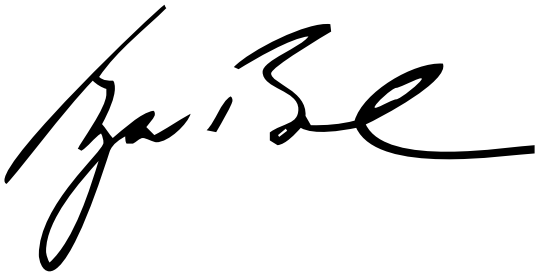
Notice of January 20, 2003

Continuation of the National Emergency With Respect to Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists who threaten to disrupt the Middle East peace process. On August 20, 1998, by Executive Order 13099, the President identified four additional persons, including Usama bin Ladin, who threaten to disrupt the Middle East peace process.

Because these terrorist activities continue to threaten the Middle East peace process and continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on January 23, 1995, as expanded on August 20, 1998, and the measures adopted on those dates to deal with that emergency must continue in effect beyond January 23, 2003. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
January 20, 2003.

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RULES GOING INTO EFFECT JANUARY 22, 2003

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Atka mackerel; published 1-22-03
Atka mackerel; published 1-22-03

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Massachusetts; published 12-23-02
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Regrigerators, refrigerator-freezers, and freezers; published 10-24-02

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Animal drugs, feeds, and related products:
No residue; definition revision; published 12-23-02

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Fish and Wildlife Service
Endangered and threatened species:
Report submission address change; published 1-22-03

TRANSPORTATION DEPARTMENT
Coast Guard
Drawbridge operations:
Iowa; published 1-22-03

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Eurocopter France; published 12-18-02
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Onions grown in—
Texas; comments due by 1-27-03; published 12-26-02 [FR 02-32505]

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Agricultural Marketing Service
Raisins produced from grapes grown in—
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Exotic Newcastle disease; quarantine area designations—
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Fishery conservation and management:
Magnuson-Stevens Act provisions—
Bering Sea and Aleutian Islands king and tanner crabs; fishing capacity reduction program; comments due by 1-27-03; published 12-12-02 [FR 02-31218]

COMMERCE DEPARTMENT
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Fishery conservation and management:
Magnuson-Stevens Act provisions—
Bering Sea and Aleutian Islands king and tanner crabs; fishing capacity reduction program; correction; comments due by 1-29-03; published 12-30-02 [FR 02-32744]

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Northeastern United States fisheries—
Atlantic sea scallop; comments due by 1-31-03; published 1-16-03 [FR 03-01025]

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Privacy Act; implementation; comments due by 1-28-03; published 11-29-02 [FR 02-29812]

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Privacy Act; implementation; comments due by 1-28-03; published 11-29-02 [FR 02-29816]

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Ozone; 1-hour standard applicability; stay of authority; comments due by 1-27-03; published 12-27-02 [FR 02-32577]

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ENVIRONMENTAL PROTECTION AGENCY
Air programs:
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ENVIRONMENTAL PROTECTION AGENCY
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Water quality planning and management and National Pollutant Discharge Elimination System program; total maximum daily loads; comments due by 1-27-03; published 12-27-02 [FR 02-32582]

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LABOR DEPARTMENT

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Lump-sum payments and medical benefits payments to covered DOE employees, their survivors, and certain vendors, contractors, and subcontractors; comments due by 1-27-03; published 12-26-02 [FR 02-31841]

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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.

H.R. 11/P.L. 108–3

National Flood Insurance Program Reauthorization Act of 2003 (Jan. 13, 2003; 117 Stat. 7)

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